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LEGISLATIVE HISTORY OF H. R. 1960

LEGISLATIVE HISTORY

Jan. 5, 1960	Public Law 87-748 H. R. 1960	House of Representatives, 86th Congress, 1st Session, H. R. 1960 introduced and referred to the House Judiciary Committee, filed as bill as introduced.
Jan. 24, 1960		House committee reported H. R. 1960 without amendments. S. Report No. 556. Print of bill and report.
July 22, 1960		House passed H. R. 1960 without amendment.
July 22, 1960		H. R. 1960 was referred to the Senate Judiciary Committee. Print of bill as referred.
Aug. 30, 1960		Senate committee voted to report H. R. 1960.
Aug. 31, 1960		Senate committee reported H. R. 1960 with amendments. S. Report No. 1902. Print of bill and report.
Sept. 6, 1960	TABLE OF CONTENTS	1960 as reported.
Sept. 20, 1960		House concurred in Senate amendments with amendments.
		Senate concurred in House amendments.
Oct. 5, 1960		Approved: Public Law 87-748.

Index and summary of H. R. 19601
Digest of Public Law 87-7482

LEGISLATIVE HISTORY

H. R. 1960
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INDEX AND SUMMARY OF H. R. 1960

COPIES AVAILABLE TO THE HOUSE OF REPRESENTATIVES OFFICIALS. LAMPHREY TO
all directors under jurisdiction of House will be the

- Jan. 6, 1961 Rep. Poff introduced H. R. 1960 which was referred to the House Judiciary Committee. Print of bill as introduced.
- June 14, 1961 House committee reported H. R. 1960 without amendment. H. Report No. 536. Print of bill and report.
- July 10, 1961 House passed H. R. 1960 without amendment.
- July 11, 1961 H. R. 1960 was referred to the Senate Judiciary Committee. Print of bill as referred.
- Aug. 30, 1962 Senate committee voted to report H. R. 1960.
- Aug. 31, 1962 Senate committee reported H. R. 1960 with amendments. S. Report No. 1992. Print of bill and report.
- Sept. 6, 1962 Senate passed H. R. 1960 as reported.
- Sept. 20, 1962 House concurred in Senate amendments with amendments.
- Senate concurred in House amendments.
- Oct. 5, 1962 Approved: Public Law 87-748.

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Sept. 6, 1962	Senate passed H. R. 1960 as reported.
Sept. 20, 1962	House concurred in Senate amendments with amendments.
	Senate concurred in House amendments.
Oct. 2, 1962	Approved: Public Law 87-748.

DIGEST OF PUBLIC LAW 87-748

COURT ACTIONS AGAINST GOVERNMENT OFFICIALS. Extends to all district courts jurisdiction to issue writs in the nature of mandamus to compel an officer or employee of the United States to perform a duty owed to the plaintiff and broadens the venue provisions of title 28 of the United States Code to permit, except as otherwise provided by law, an action to be brought against a Government official or agency in any judicial district in which (1) a defendant resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.

87TH CONGRESS
1ST SESSION

H. R. 1960

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1961

Mr. POFF introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 85 of title 28 of the United States Code is
4 amended—

5 (a) By adding at the end thereof the following new
6 section:

7 “§ 1361. Action to compel an officer of the United States to
8 perform his duty

9 “The district courts shall have original jurisdiction of
10 any action to compel an officer or employee of the United
11 States or any agency thereof to perform his duty.”

1 (b) By adding at the end of the table of sections for
2 chapter 85 of title 28 of the United States Code the follow-
3 ing:

“1361. Action to compel an officer of the United States to perform his
duty.”

4 SEC. 2. Section 1391 of title 28 of the United States
5 Code is amended by adding at the end thereof the following
6 new subsection:

7 “(e) A civil action in which each defendant is an offi-
8 cer or employee of the United States or any agency thereof
9 acting in his official capacity or under color of legal authority,
10 or an agency of the United States, may be brought in any
11 judicial district where a plaintiff in the action resides, or
12 in which the cause of the action arose, or in which any
13 property involved in the action is situated.

14 “The summons and complaint in such an action shall be
15 served as provided by the Federal Rules of Civil Procedure
16 except that the delivery of the summons and complaint to
17 the officer or agency as required by the rules may be made
18 by certified mail beyond the territorial limits of the district
19 in which the action is brought.”

87TH CONGRESS
1ST Session

H. R. 1960

A BILL

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

By Mr. POFF

JANUARY 6, 1961

Referred to the Committee on the Judiciary

JURISDICTION AND VENUE OF THE U.S. DISTRICT COURTS IN ACTIONS AGAINST GOVERNMENT OFFICIALS

JUNE 14, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FORRESTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1960]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1960) to amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the U.S. district courts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this bill is to make it possible to bring actions against Government officials and agencies in U.S. district courts outside the District of Columbia, which, because of certain existing limitations on jurisdiction and venue, may now be brought only in the U.S. District Court for the District of Columbia.

COST

This bill does not create new liabilities for the Government.

LEGISLATIVE HISTORY

An identical bill, H.R. 12622, passed the House in the closing days of the 86th Congress but was not acted upon by the Senate.

STATEMENT

This bill is directed primarily at facilitating review by the Federal courts of administrative actions. To attain this end the bill does two things: First, it specifically grants jurisdiction to the district courts to

issue orders compelling Government officials to perform their duties; secondly, it broadens the venue provisions of title 28 of the United States Code to permit an action to be brought against a Government official in the judicial district where the plaintiff resides, or in which the cause of action arose, or in which any property involved in the action is situated. This bill is not intended to give access to the Federal courts to an action which cannot now be brought against a Federal official in the U.S. District Court for the District of Columbia.

Where a statute does not specifically provide for review of the actions of a Government official, the aggrieved party may obtain judicial review through invoking one of several nonstatutory proceedings. Which of these he chooses turns upon the relief sought. In certain cases, the relief desired can be obtained only by compelling a Government official to perform an act which he is required to do by statute but which he has nevertheless failed to do. Traditionally, the appropriate remedy in that case has been a writ of mandamus. However, unless jurisdiction is otherwise acquired, the U.S. district courts have long disclaimed jurisdiction to hear petitions for mandamus. Nor has the abolition of mandamus by rule 81(b) of the Federal Rules of Civil Procedure altered this jurisdictional limitation, since the Federal rules did not change either the substance of the relief which the district courts could grant or the cases over which they had jurisdiction.

The single exception to the general proposition that the U.S. district courts do not have jurisdiction over original actions for mandamus is the U.S. District Court for the District of Columbia. This court, in addition to being a Federal court, is also charged with the enforcement of domestic law. Its jurisdiction is derived not only from title 28 but also from the laws of the State of Maryland, which governed the area ceded to the District of Columbia in 1801. That body of law included jurisdiction to issue writs of mandamus in original proceedings.

The result of this historic accident has been that a person who seeks to have a Federal court compel a Federal official to perform a duty of his office must bring his action in the District Court for the District of Columbia. This the committee considers an unfair imposition upon citizens who seek no more than lawful treatment from their Government.

Section 1 of this bill therefore amends chapter 85 of title 28 of the United States Code to provide specifically that all district courts shall have original jurisdiction over any action to compel an officer or employee of the United States or any agency thereof to perform his duty.

Section 2 is the venue section of the bill. Its purpose is similar to that of section 1. It is designed to permit an action which is essentially against the United States to be brought locally rather than requiring that it be brought in the District of Columbia simply because Washington is the official residence of the officer or agency sued. It is not intended to create governmental liability where it does not now exist. It is concerned only with the place where the action may be brought.

The problem of venue in actions against Government officials for judicial review of official action arises when the action must be brought against supervisory officials or agency heads whose official residences are, with few exceptions, in the District of Columbia. The need to bring an action against an agency head rather than an official in the

field may arise either because of a statute authorizing such a suit or because of the doctrine of indispensable parties. The question of when a superior officer is an indispensable party is not altogether clear from the cases. Suffice it to say that if it is determined that a superior officer whose official residence is in the District of Columbia is an indispensable party, that action must be brought in the U.S. District Court for the District of Columbia.

The venue problem also arises in an action against a Government official seeking damages from him for actions which are claimed to be without legal authority but which were taken by the official in the course of performing his duty.

The committee is of the view that the current state of the law respecting venue in actions against Government officials is contrary to the sound and equitable administration of justice. Frequently, the administrative determinations involved are made not in Washington but in the field. In either event, these are actions which are in essence against the United States. The Government official is defended by the Department of Justice whether the action is brought in the District of Columbia or in any other district. U.S. attorneys are present in every judicial district. Requiring the Government to defend Government officials and agencies in places other than Washington would not appear to be a burdensome imposition.

On the other hand, where a citizen lives thousands of miles from Washington, where the property involved is located outside of the District of Columbia, where the cause of action arose elsewhere, to require that the action be brought in Washington is to tailor our judicial processes to the convenience of the Government rather than to provide readily available, inexpensive judicial remedies for the citizen who is aggrieved by the workings of Government.

However, disregarding considerations of convenience, broadening of the venue provisions of title 28 to permit these actions to be brought locally is desirably from the standpoint of efficient judicial administration. Frequently, these proceedings involve problems which are recurrent but peculiar to certain areas, such as water rights, grazing land permits, and mineral rights. These are problems with which judges in those areas are familiar and which they can handle expeditiously and intelligently.

In addition, the present venue provision results in a concentration of these actions in the District Court for the District of Columbia, a court which is already heavily burdened. Court congestion is increased and substantial delays are incurred. The broadened venue provided in this bill will assist in achieving prompt administration of justice by making it possible to bring these actions in courts throughout the country, many of which are not nearly as burdened as the District Court for the District of Columbia.

To achieve these results, section 2 of this bill amends section 1391 of title 28 of the United States Code to provide that an action may be brought against an officer or an employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, in any judicial district where a plaintiff in the action resides, or in which the cause of action arose, or in which any property involved in the action is situated.

By including the officer or employee, both in his official capacity and acting under color of legal authority, the committee intends to

make the proposed section 1391 (e) applicable not only to those cases where an action may be brought against an officer or employee in his official capacity. It intends to include also those cases where the action is nominally brought against the officer in his individual capacity even though he was acting within the apparent scope of his authority and not as a private citizen. Such actions are also in essence against the United States but are brought against the officer or employee as individual only to circumvent what remains of the doctrine of sovereign immunity. The considerations of policy which demand that an action against an official may be brought locally rather than in the District of Columbia require similar venue provisions where the action is based upon the fiction that the officer is acting as an individual. There is no intention, however, to alter the venue requirements of Federal law insofar as suits resulting from the official's private actions are concerned.

In order to give effect to the broadened venue provision of this bill, it is necessary to modify the service requirements under the Federal Rules of Civil Procedure insofar as they apply to actions made possible by this bill. Rule 4(f) restricts effective service to the territorial limits of a State in which the district court is held unless a statute specifically provides for it to go beyond the territorial limits of that State. Since this bill is designed to make a Federal official or agency amenable to suit locally, the bill provides that the delivery of the summons and complaint to the officer or agency may be made by certified mail outside of the territorial limits of the district in which the action is brought. In all other respects, the summons and complaint is to be served as provided by the Federal Rules of Civil Procedure.

It is contemplated that where an action is only nominally brought against an official, as an individual, service may be had in the manner provided by rule 4(d)(5). The exception to the territorial limitation on service provided in this bill would, of course, be equally applicable to that situation.

The bill does not define the term "agency." However, it is contemplated that it will be taken to mean any department, independent establishment, commission, administration, authority, board, or bureau of the United States, or any corporation in which the United States has a proprietary interest.

The venue provision in this bill is supplementary rather than exclusive.

DEPARTMENTAL RECOMMENDATIONS

The Judicial Conference of the United States has expressed its approval of this bill.

The report of the Conference follows:

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., June 14, 1961.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 1960, a bill which would permit a civil action to be brought against an officer of the United States in any judicial district

where any plaintiff in the action resides. H.R. 1960 is identical to H.R. 12622 which was approved by the House of Representatives during the 86th Congress.

This proposal for amending the venue statute was studied by the Committees on Court Administration and Revision of the Laws, and favorable action was taken by the Judicial Conference of the United States.

H.R. 1960 (a) confers upon the district courts original jurisdiction of actions to compel officers or employees of the United States or agencies thereof to perform their duty, (b) provides that civil actions in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides or in which the cause of action arose or in which any property in the action is situated, and (c) provides that the summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

The Judicial Conference approved the proposal at its session in September 1960, and in March 1961 specifically approved H.R. 1960, and the Conference recommends that the legislation be enacted.

Sincerely yours,

WARREN OLNEY III, *Director.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italic:

CHAPTER 85, TITLE 28, UNITED STATES CODE

Chapter 85. DISTRICT COURTS; JURISDICTION.

* * *
* * *

§ 1361. *Action to compel an officer of the United States to perform his duty.*

The district courts shall have original jurisdiction of any action to compel an officer or employee of the United States or any agency thereof to perform his duty.

Chapter 85. DISTRICT COURTS; JURISDICTION.

Sec.
* * *
* * *

1361. *Action to compel an officer of the United States to perform his duty.*

CHAPTER 87, TITLE 28, UNITED STATES CODE

§ 1391. Venue generally.

* * *

* * *

* * *

(e) *A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides, or in which the cause of the action arose, or in which any property involved in the action is situated.*

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.



Union Calendar No. 193

87TH CONGRESS
1ST SESSION

H. R. 1960

[Report No. 536]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1961

Mr. POFF introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 14, 1961

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That chapter 85 of title 28 of the United States Code is
4 amended—

5 (a) By adding at the end thereof the following new
6 section:

1 “§ 1361. Action to compel an officer of the United States to
2 perform his duty

3 “The district courts shall have original jurisdiction of
4 any action to compel an officer or employee of the United
5 States or any agency thereof to perform his duty.”

6 (b) By adding at the end of the table of sections for
7 chapter 85 of title 28 of the United States Code the follow-
8 ing:

 “1361. Action to compel an officer of the United States to perform his
 duty.”

9 SEC. 2. Section 1391 of title 28 of the United States
10 Code is amended by adding at the end thereof the following
11 new subsection:

12 “(e) A civil action in which each defendant is an offi-
13 cer or employee of the United States or any agency thereof
14 acting in his official capacity or under color of legal authority,
15 or an agency of the United States, may be brought in any
16 judicial district where a plaintiff in the action resides, or
17 in which the cause of the action arose, or in which any
18 property involved in the action is situated.

19 “The summons and complaint in such an action shall be
20 served as provided by the Federal Rules of Civil Procedure
21 except that the delivery of the summons and complaint to
22 the officer or agency as required by the rules may be made
23 by certified mail beyond the territorial limits of the district
24 in which the action is brought.”

Union Calendar No. 193

87TH CONGRESS
1ST SESSION

H. R. 1960

[Report No. 536]

A BILL

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

By Mr. POFF

JANUARY 6, 1961

Referred to the Committee on the Judiciary

JUNE 14, 1961

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DEPARTMENT OF AGRICULTURE CENTENNIAL OBSERVANCE

The Clerk called the resolution (H.J. Res. 435) to provide for recognition of the centennial of the establishment of the Department of Agriculture, and for other purposes.

Mr. FORD. Mr. Speaker, I ask unanimous consent that the joint resolution be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

CENTENNIAL OF LAND-GRANT UNIVERSITIES AND COLLEGES

The Clerk called the resolution (H.J. Res. 436) to provide for recognition of the centennial of the establishment of the national system of land-grant universities and colleges.

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent that the joint resolution be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

COMPENSATE PRISON INMATES FOR INJURIES INCURRED

The Clerk called the bill (H.R. 7358) to amend section 4126 of title 18, United States Code, with respect to compensation to prison inmates for injuries incurred in the course of employment.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of the third paragraph of section 4126 of title 18, United States Code, is amended by adding at the end thereof the words "or in any work activity in connection with the maintenance or operation of the institution where confined."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JURISDICTION AND VENUE OF U.S. DISTRICT COURTS

The Clerk called the bill (H.R. 1960) to amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the U.S. district courts, and for other purposes.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 85 of title 28 of the United States Code is amended—

(a) By adding at the end thereof the following new section:

"§ 1361. Action to compel an officer of the United States to perform his duty

"The district courts shall have original jurisdiction of any action to compel an officer

or employee of the United States or any agency thereof to perform his duty."

(b) By adding at the end of the table of sections for chapter 85 of title 28 of the United States Code the following:

"1361. Action to compel an officer of the United States to perform his duty."

Sec. 2. Section 1361 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides, or in which the cause of the action arose, or in which any property involved in the action is situated.

"The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought."

Mr. POFF. Mr. Speaker, the recent growth in the size and power of the executive branch of the Government has precipitated an alarming increase in court litigation growing out of controversies between the Federal Government and private citizens. Frequently, private citizens are compelled to bring a suit against a Government official to compel him to perform his duty under the law. Moreover, private citizens are often victims of adverse decisions by administrative agencies of the Federal Government and, in order to protect their rights, are compelled to take an appeal to a Federal court.

Under the law as it now exists, a private citizen in such cases is not privileged to bring his suit in the local Federal court. Rather, he is required to institute the suit in the Federal District Court in Washington, D.C. This is true primarily for two reasons. First, local district courts historically have disclaimed jurisdiction over mandamus proceedings. A mandamus proceeding is a law suit to compel a Government official to perform his duty. Second, under the venue provisions of the present law, the suit must be brought in the judicial district where the principal defendant makes his residence. Under the doctrine of indispensable parties, the head of the Government agency must be joined as a party defendant in the appeal from an adverse decision of the agency. The official residence of the head of the agency almost always is the District of Columbia. This means that the aggrieved citizen must bring his suit in the Federal district court in Washington, D.C.

H.R. 1960 contains two sections. The first section grants jurisdiction to local district courts to entertain mandamus proceedings to compel a Government official to perform his duty. The second section provides that, at the option of the private citizen, the suit may be brought in the district court located in any one of three places, viz, first, the judicial district where the citizen resides; second, the judicial district where the cause of action arose; or third, the judicial district where the property involved in the controversy is located.

There is absolutely no reason why the Federal Government should require private citizens living at remote distances from Washington to assume the physical and financial burden of prosecuting their legal rights against their Government in a strange forum. Often litigants are required to travel thousands of miles, lose time from their employment and suffer interminable delay awaiting their turn on a congested court docket. Justice delayed is justice denied. On the other hand, the Federal Government suffers no inconvenience in conducting the litigation in the locality where the controversy arose. There are Federal courts, Federal attorneys, Federal marshals and officers of Federal agencies in every quarter of the Nation. In fact, the convenience of the Government would be promoted by trying the case in the local district court where the papers are available, the property is accessible, and the witnesses are within easy reach.

Our Nation was founded upon a profound respect for the rights of the individual citizen. The Government should be willing always to accommodate itself to the preservation of those rights, more particularly when the Government is the party in controversy with the private citizen.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

LIMITING PRIORITY AND NONDISCHARGEABILITY OF TAXES

The Clerk called the bill (H.R. 4473) to amend the Bankruptcy Act with respect to limiting the priority and non-dischargeability of taxes in bankruptcy.

Mr. FORD. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

MODIFICATION OF THE PROJECT MISSISSIPPI RIVER

The Clerk called the bill (H.R. 4660) to authorize modification of the Project Mississippi River between Missouri River and Minneapolis, Minn., damage to levee and drainage districts, with particular reference to the Kings Lake Drainage District, Missouri.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the project for the Mississippi River between Missouri River and Minneapolis, Minnesota, "Damage to Levee and Drainage Districts," House Document Numbered 135, Eighty-fourth Congress, authorized by the Rivers and Harbors Act of July 3, 1958, Public Law 500, Eighty-fifth Congress, is hereby modified to provide for a lump-sum payment to the Kings Lake Drainage District, Missouri, in lieu of payments to individual landowners for flowage easements.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FACULTY AT U.S. MERCHANT MARINE ACADEMY

The Clerk called the bill (S. 576) to amend section 216 of the Merchant Marine Act, 1936, as amended, to clarify the status of the faculty and administrative staff at the U.S. Merchant Marine Academy, to establish suitable personnel policies for such personnel, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. DEROUNIAN. Mr. Speaker, I object.

WYANDOTTE NATIONAL WILDLIFE REFUGE

The Clerk called the bill (H.R. 1182) to create the Wyandotte National Wildlife Refuge.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the islands more specifically referred to in section 2 of this Act in the Detroit River are hereby established and designated as the Wyandotte National Wildlife Refuge. The Wyandotte National Wildlife Refuge shall be administered by the Secretary of the Interior in accordance with the laws and regulations relating to national wildlife refuges, and shall be maintained as a refuge and breeding place for migratory birds and other wildlife in connection therewith.

Sec. 2. The lands referred to in the first section of this Act are more specifically described as follows:

In township 3 south, range 11 east, Michigan meridian, those federally owned islands in the Detroit River known as Grassy and Mammy Juda (or Mammajuda) Islands, together with all accretion and reliction and all soil of the bed of the Detroit River bordering on the meander lines of said islands and appurtenant thereto by reason of riparian ownership.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SALE OF LIGHT STATION PROPERTY IN SCITUATE, MASS.

The Clerk called the bill (H.R. 1452) to authorize the sale of a portion of the former light station property in Scituate, Mass.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. FORD. Mr. Speaker, reserving the right to object, I should like to inquire of the author of the bill if he has any objection to the inclusion of a provision which would require that the persons buying the property pay the fair market value of the reversionary interest.

Mr. MICHEL. Mr. Speaker, reserving the right to object, I would have no objection to that. This is only a small parcel of land that we are talking about, perhaps 7 by 15 feet. It is so small it would be practically impossible to determine what the value would be. As I understand it, the entire area of the lighthouse site is 5 acres and that it was purchased at one time for only \$1,000. My mathematics is not good enough to figure precisely what the value of this

parcel would be, but it would be a very small amount. We are talking about 50 to 55 square feet of land. By way of comparison there are 217,800 square feet in a 5-acre plot and this entire area was deeded to the town of Scituate originally for \$1,000, with a reversionary interest.

Mr. FORD. Mr. Speaker, the only problem is that the objectors have consistently required that anybody buying property from the Federal Government pay fair market value for it, and in order to be consistent we ought to require the same here as we have with others.

Mr. MICHEL. My constituent, who simply wants to rebuild the corner of his front porch which now protrudes over this parcel of land, is perfectly willing to pay whatever amount is reasonable and appropriate. These folks do not want to profit at the expense of the Government. I certainly have no objection to amending the bill to provide for this payment and ask unanimous consent that the bill be passed over without prejudice in order that I might work out the appropriate language.

Mr. MICHEL. Mr. Speaker, in view of the statement of the gentleman from Michigan [Mr. FORD], I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

CONSERVATION OF MIGRATORY WATERFOWL

The Clerk called the bill (H.R. 7391) to promote the conservation of migratory waterfowl by the acquisition of wetlands and other essential waterfowl habitat, and for other purposes.

Mr. ASPINALL. Mr. Speaker, this bill is listed to be brought up under suspension; therefore, I ask unanimous consent that it be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

ALVIN R. BUSH DAM, PA.

The Clerk called the bill (H.R. 6676) to designate the Kettle Creek Dam on Kettle Creek, Pa., as the Alvin R. Bush Dam.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the dam known as the Kettle Creek Dam authorized to be constructed on Kettle Creek in the Susquehanna River Basin in the State of Pennsylvania by the Flood Control Act of 1954 shall be known and designated hereafter as the "Alvin R. Bush Dam". Any law, regulation, map, document, record, or other paper of the United States in which such dam is referred to shall be held to refer to such dam as the "Alvin R. Bush Dam".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FRANCIS E. WALTER DAM, PA.

The Clerk called the bill (H.R. 4300) to designate the Bear Creek Dam on the Lehigh River, Pa., as the Francis E. Walter Dam.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the dam known as the Bear Creek Dam authorized to be constructed on the Lehigh River in the Delaware River Basin in the State of Pennsylvania by the Flood Control Act of 1946 (60 Stat. 644) shall be known and designed hereafter as the "Francis E. Walter Dam". Any law, regulation, map, document, record, or other paper of the United States in which such dam is referred to shall be held to refer to such dam as the "Francis E. Walter Dam".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WAR RISK INSURANCE

The Clerk called the bill (S. 1931) to extend the provisions of title XIII of the Federal Aviation Act of 1958, relating to war risk insurance.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1312 of title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1542), is hereby amended by striking out "June 13, 1961" and inserting "June 13, 1966" in lieu thereof.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SALARY PROTECTION FOR CERTAIN EMPLOYEES

The Clerk called the bill (H.R. 7043) to extend to employees subject to the Classification Act of 1949 the benefits of salary increases in connection with the protection of basic compensation rates from the effects of downgrading actions, to provide salary protection for postal field service employees in certain cases of reduction in salary standing, and for other purposes.

Mr. FORD. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

POSITIONS IN THE GENERAL ACCOUNTING OFFICE

The Clerk called the bill (H.R. 6007) to amend section 505(d) of the Classification Act of 1949, as amended, with respect to certain positions in the General Accounting Office.

Mr. FORD. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

87TH CONGRESS
1ST SESSION

H. R. 1960

IN THE SENATE OF THE UNITED STATES

JULY 11, 1961

Read twice and referred to the Committee on the Judiciary

AN ACT

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 85 of title 28 of the United States Code is
4 amended—

5 (a) By adding at the end thereof the following new
6 section:

87TH CONGRESS
1ST SESSION

H. R. 1960

AN ACT

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

JULY 11, 1961

Read twice and referred to the Committee on the
Judiciary

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued August 31, 1962
For actions of August 30, 1962
87th-2d, No. 156

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HIGHLIGHTS: House appointed conferees on farm bill. House committee voted to report wilderness bill. House passed bill to provide additional research facilities for experiment stations. House committee voted to report bill to facilitate work of Forest Service. Sen. Kerr inserted Treasury report supporting foreign trade bill. Sen. Muskie urged support for his amendment to foreign trade bill re imports from low-wage countries. Sen. Pastore defended President's textile program against recent attack.

SENATE

1. TAXATION. Continued debate on H. R. 10650, the proposed Revenue Act of 1962 (pp. 17070-120, 17124-55). Agreed to the committee amendment to permit farmers to deduct, in computing their Federal income tax, expenditures incurred by them in clearing land to make it suitable for farming, up to \$5,000 or 25 percent of the taxable income from farming for the year, whichever is the lesser (p. 17070). Sens. Carlson, Proxmire, Miller, Douglas, Curtis, Javits, and Sparkman submitted amendments intended to be proposed to this bill. pp. 17058-62, 17163-4
2. FOREIGN TRADE. Sen. Kerr inserted a letter and memorandum from Treasury Secretary Dillon supporting the proposed Trade Expansion Act of 1962. pp. 17123-4. Sen. Muskie inserted his testimony before the Senate Finance Committee in support of his proposed amendment to the foreign trade bill to give the President authority to enter into marketing agreements with foreign countries to protect domestic industry from imports from countries with sub-standard wages and working conditions. pp. 17162-3

3. TEXTILES. Sen. Pastore defended the President's textile program against recent attack that it was "to appease the strongly protectionist elements in the cotton textile industry," and inserted several tables to support his position. Sens. Muskie, Thurmond, and Hickey commended Sen. Pastore's statement. pp. 17155-9
4. MINING. The Interior and Insular Affairs Committee reported with amendments S. 3451, to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed (S. Rept. 1984) p. 17058
5. LAW; COURTS. The Judiciary Committee voted to report (but did not actually report) H. R. 1960, to amend title 28 of the U. S. Code relating to the jurisdiction of the U. S. district courts. p. D790-1
6. WILDLIFE. The Commerce Committee reported with amendments H. J. Res. 489, to provide for the protection of the golden eagle (S. Rept. 1986). p. 17163
7. EXPORT CONTROL. Both Houses received from Commerce a report on Export Control for the second quarter of 1962. pp. 17163, 17210
8. VIRGIN ISLANDS. Both Houses received from GAO "a report on the review of certain activities of the government of the Virgin Islands." pp. 17163, 17210
9. PERSONNEL. Sen. Proxmire expressed concern over "the serious shortage of scientific and engineering manpower" and inserted several items on the subject. pp. 17120-3
10. LEGISLATIVE PROGRAM. Agreed to a unanimous-consent agreement to begin consideration of the independent offices appropriation bill on Fri., Aug. 31. p. 17119

HOUSE

11. FARM PROGRAM. Agreed to H. Res. 772, to send to conference H. R. 12391, the proposed Food and Agriculture Act of 1962. Conferees were appointed. Senate conferees had already been appointed. pp. 17183-6
12. WILDERNESS. The Interior and Insular Affairs Committee voted to report (but did not actually report) with amendment H. R. 776, the proposed National Wilderness Preservation Act. p. D793
13. RESEARCH. Passed without amendment H. R. 12712, to assist the States to provide additional facilities for research at the State agricultural experiment stations. pp. 17186-8
14. FORESTRY. The Subcommittee on Forests of the Agriculture Committee voted to report to the full committee with amendment H. R. 12434 consisting of miscellaneous administrative provisions to facilitate the work of the Forest Service. p. D793
15. TERRITORIES. Agreed to the conference report on H. R. 10062, to extend the application of certain laws to American Samoa. This bill will now be sent to the President. p. 17173
16. PERSONNEL. Passed with amendment S. 919, to amend the Hatch Political Activities Act to eliminate the requirement that the Civil Service Commission impose no penalty less than 90 days' suspension for any violation of Sec. 9 of the Act. A similar bill, H. R. 12661, was laid on the table. pp. 17165-6
The Post Office and Civil Service Committee reported without amendment H.R. 5698, to extend the apportionment requirement in the Civil Service Act to

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
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(For information only;
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		Youth Conservation.....3

HIGHLIGHTS: Senate passed independent offices appropriation bill. Sen. Javits commended holding of World Food Congress. Sen. Moss urged enactment of Youth Conservation Corps bill. Senate passed measure for National School Lunch Week. Rep. Breiding inserted Secretary's statement regarding vote on wheat referendum.

SENATE

1. INDEPENDENT OFFICES APPROPRIATION BILL, 1963. By a vote of 65 to 5, passed with amendments this bill, H. R. 12711 (pp. 17247-63, 17266-73, 17278-90). Conferees were appointed (p. 17290). By a vote of 14 to 68, rejected an amendment by Sen. Young, O., to strike out the item of \$93,800,000 for construction of civil defense shelters in Federal buildings and provide, instead, \$10,000,000 for civil defense research studies (pp. 17258-63). The committee report includes the following statement regarding limitations on indirect expenses of research projects for agencies included in this bill:

"Section 304 of the General Provisions of the act as passed by the House limits the payment of indirect expenses in connection with research projects to a maximum rate of 25 percent of the direct costs. This limitation is applicable to research projects supported by grants. The committee strongly supports the action of the House in establishing a maximum rate of 25 percent since it will permit agencies, such as the National Science Foundation, to approve the payment of indirect costs on the basis of a flat rate percent which is equitable to both the Federal Government and the colleges and universities. The committee feels that the current flat rates being used by agencies should be adjusted

- so that colleges and universities will be reimbursed for indirect expenses in connection with research projects at a flat rate which is a reasonable approximation of average costs."
2. SCHOOL LUNCH WEEK. Passed with amendment S. J. Res 211, to provide that the week beginning on the second Sunday of October each year shall be designated as National School Lunch Week. p. 17295
 3. YOUTH CONSERVATION CORPS. Sen. Moss urged enactment of legislation, during this session of Congress, to provide for the establishment of a Youth Conservation Corps. p. 17307
 4. WORLD FOOD CONGRESS. Sen. Javits commended the World Food Congress to be held in Washington, D.C., in June 1963, and praised the U. N. Food and Agriculture Organization "as one of the oldest and most effective organizations of the United Nations." pp. 17243-4
 5. TAXATION. Continued debate on H. R. 10650, the proposed Revenue Act of 1962. pp. 17232-43, 17300-06
 6. MINERALS. Conferees were appointed on H. R. 10566, to provide for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, Ariz., and H. R. 8134, to effect a statutory withdrawal of certain former Taylor Grazing Act lands near Phoenix, Ariz., from all forms of entry under the public land laws. House conferees have already been appointed on these bills. p. 17246
 7. SAFETY. Passed without amendment S. J. Res. 222, to provide for the designation of the period Oct. 1962 to Oct. 1963 as National Safety Council Fiftieth Anniversary Year. p. 17299
-
8. COURTS. The Judiciary Committee reported with amendments H. R. 1960, to amend title 28 of the U. S. Code relating to the jurisdiction of the U. S. district courts (S. Rept. 1992). p. 17314
-
9. NOMINATION. Received the nomination of Willard Wirtz to be Secretary of Labor. p. 17315
 10. ELECTRIFICATION. Sen. Metcalf criticized the electric power rates of the Montana Power Company as "exorbitant", and inserted several items to support his position. pp. 17311-4
 11. ADJOURNED until Tues., Sep. 4. p. 17315
- HOUSE
12. WHEAT. Rep. Breeding inserted a statement by Secretary Freeman regarding the wheat referendum which says in part, "I would interpret this referendum as a specific demand for better action on farm legislation than we have seen to date." p. 17223
 13. PUBLIC WORKS. Rep. Gross objected to returning S. 2965, the public works bill, to the House in order to make a technical correction in the House amendments. pp. 17214-5
 14. APPROPRIATIONS. Received the conference report on H. R. 11151, the legislative appropriation bill (H. Rept. 2316). pp. 17213-4, 17230

JURISDICTION AND VENUE OF THE U.S. DISTRICT COURTS IN ACTIONS AGAINST GOVERNMENT OFFICIALS

AUGUST 31, 1962.—Ordered to be printed

Mr. CARROLL, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1960]

The Committee on the Judiciary, to which was referred the bill (H.R. 1960) to amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the U.S. district courts, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 2, line 5, strike the words "his duty", and insert in lieu thereof the following: "a duty owed to the plaintiff or to make a decision in any matter involving the exercise of discretion."

2. On page 2, commencing with line 12, strike out all down to and including line 18, and insert in lieu thereof the following:

(e) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.

PURPOSE OF AMENDMENTS

The purpose of the amendments is to provide specifically that the jurisdiction conferred on the district courts by the bill is limited to compelling a Government official or agency to perform a duty owed

to the plaintiff or to make a decision, but not to direct or influence the exercise of discretion of the officer or agency in the making of the decision; to provide that the bill does not supersede other specific statutory provision, and to provide that if real property is involved in the action, the action must be brought in the judicial district in which the real property is situated rather than where the plaintiff resides.

PURPOSE

The purpose of this bill, as amended, is to make it possible to bring actions against Government officials and agencies in U.S. district courts outside the District of Columbia, which, because of certain existing limitations on jurisdiction and venue, may now be brought only in the U.S. District Court for the District of Columbia.

STATEMENT

This legislation does not create new liabilities or new causes of action against the U.S. Government. The bill, as amended, is intended to facilitate review by the Federal courts of administrative actions. To attain this end, the bill does two things. First, it specifically grants jurisdiction to the district courts to issue orders compelling Government officials to perform their duties and to make decisions in matters involving the exercise of discretion, but not to direct or influence the exercise of the officer or agency in the making of the decision. Secondly, it broadens the venue provisions of title 28 of the United States Code to permit an action to be brought against a Government official in the judicial district (1) where a defendant resides, or (2) in which the cause of action arose, or (3) in which any real property involving the action is situated, or (4) if no real property is involved in the action, where the plaintiff resides. This bill will not give access to the Federal courts to an action which cannot now be brought against a Federal official in the U.S. District Court for the District of Columbia.

Where a statute does not specifically provide for review of the actions of a Government official, the aggrieved party may obtain judicial review through invoking one of several nonstatutory proceedings. Which of these he chooses turns upon the relief sought. In certain cases, the relief desired can be obtained only by compelling a Government official to perform an act which he is required to do by statute but which he has nevertheless failed to do. Traditionally, the appropriate remedy in that case has been a writ of mandamus. However, unless jurisdiction is otherwise acquired, the U.S. district courts have long disclaimed jurisdiction to hear petitions for mandamus.

The single exception to the general proposition—that the U.S. district courts do not have jurisdiction over original actions for mandamus is the U.S. District Court for the District of Columbia. This court, in addition to being a Federal court, is also charged with the enforcement of domestic law. Its jurisdiction is derived not only from title 28 but also from the laws of the State of Maryland, which governed the area ceded to the District of Columbia in 1801. That body of law included jurisdiction to issue writs of mandamus in original proceedings.

The result of this historic accident has been that a person who seeks to have a Federal court compel a Federal official to perform a duty of his office must bring his action in the District Court for the District of Columbia. This the committee considers an unfair imposition upon

citizens who seek no more than lawful treatment from their Government.

The problem of venue in actions against Government officials for judicial review of official action arises when the action must be brought against supervisory officials or agency heads whose official residences are, with few exceptions, in the District of Columbia. The need to bring an action against an agency head rather than an official in the field may arise either because of a statute authorizing such a suit or because of the doctrine of indispensable parties. The question of when a superior officer is an indispensable party is not altogether clear from the cases. Suffice it to say that if it is determined that a superior officer whose official residence is in the District of Columbia is an indispensable party, that action must be brought in the U.S. District Court for the District of Columbia.

The venue problem also arises in an action against a Government official seeking damages from him for actions which are claimed to be without legal authority but which were taken by the official in the course of performing his duty.

The committee is of the view that the current state of the law respecting venue in actions against Government officials is contrary to the sound and equitable administration of justice. Frequently, the administrative determinations involved are made not in Washington but in the field. In either event, these are actions which are in essence against the United States. The Government official is defended by the Department of Justice whether the action is brought in the District of Columbia or in any other district. U.S. attorneys are present in every judicial district. Requiring the Government to defend Government officials and agencies in places other than Washington would not appear to be a burdensome imposition.

On the other hand, where a citizen lives thousands of miles from Washington, where the property involved is located outside of the District of Columbia, where the cause of action arose elsewhere, to require that the action be brought in Washington is to tailor our judicial processes to the convenience of the Government rather than to provide readily available, inexpensive judicial remedies for the citizen who is aggrieved by the workings of Government.

However, disregarding considerations of convenience, broadening of the venue provisions of title 28 to permit these actions to be brought locally is desirable from the standpoint of efficient judicial administration. Frequently, these proceedings involve problems which are recurrent but peculiar to certain areas, such as water rights, grazing land permits, and mineral rights. These are problems with which judges in those areas are familiar and which they can handle expeditiously and intelligently.

In addition, the present venue provision results in a concentration of these actions in the District Court for the District of Columbia, a court which is already heavily burdened. Court congestion is increased and substantial delays are incurred. The broadened venue provided in this bill will assist in achieving prompt administration of justice by making it possible to bring these actions in courts throughout the country, many of which are not nearly as burdened as the District Court for the District of Columbia.

To achieve these results, section 2 of this bill amends section 1391 of title 28 of the United States Code to provide that an action may be brought against an officer or an employee of the United States or any

agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, in any judicial district where a defendant resides, or in which the cause of action arose, or in which any real property involving the action is situated, or if no real property is involved in the action, where the plaintiff resides.

The Department of Justice in its report on the bill expressed concern that the bill might be interpreted to give the district courts jurisdiction to order a Government official to act in a manner contrary to his discretion. The committee, therefore, has adopted the amendment set forth to section 1 which specifies that the court can only compel the official or agency to act where there is a duty, which the committee construes as an obligation, to act or, where the official or agency has failed to make any decision in a matter involving the exercise of discretion, but only to order that a decision be made and with no control over the substance of the decision. The Department of Justice also expressed concern that where the plaintiff resides in a different judicial district than that in which real property involved in the action is situated, it would not be in the interest of an expeditious proceeding to have the action brought in the judicial district where the plaintiff resides. The committee considered this suggestion meritorious and approved the amendment set out to section 2 of the bill. The committee also approved an amendment to section 2 of the bill providing that the provision with respect to venue should apply only to the extent that it is not otherwise provided by law. Examples of such proceedings covered by this provision are proceedings brought with respect to Federal taxes and under section 5 of the act of September 26, 1961, relating to immigration.

The words "original jurisdiction" as used in section 1 of the bill are not intended to limit the existing powers of district courts to issue mandatory injunctions in aid of jurisdiction otherwise acquired. Likewise, there is no intent that the bill affect the doctrine of exhaustion of administrative remedies.

As stated in the House report, the bill does not define the term "agency," but the committee agrees that it should be taken to mean any department, independent establishment, commission, administration, authority, board, or bureau of the United States, or any corporation in which the United States has a proprietary interest.

The report of the Judicial Conference of the United States, as incorporated in the letter from Warren Olney III, Director of the Administrative Office of the U.S. Courts, affirmatively recommending the enactment of H.R. 1960 is attached hereto and made a part hereof. The report from the Department of Justice to the Judiciary Committee of the U.S. Senate on H.R. 1960 and its companion Senate bill, S. 20, is also attached hereto and made a part hereof.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., June 14, 1961.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 1960, a bill which would permit a civil action to be brought against an officer of the United States in any judicial district

where any plaintiff in the action resides. H.R. 1960 is identical to H.R. 12622 which was approved by the House of Representatives during the 86th Congress.

This proposal for amending the venue statute was studied by the Committees on Court Administration and Revision of the Laws, and favorable action was taken by the Judicial Conference of the United States.

H.R. 1960 (a) confers upon the district courts original jurisdiction of actions to compel officers or employees of the United States or agencies thereof to perform their duty, (b) provides that civil actions in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides or in which the cause of action arose or in which any property in the action is situated, and (c) provides that the summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

The Judicial Conference approved the proposal at its session in September 1960, and in March 1961 specifically approved H.R. 1960, and the Conference recommends that the legislation be enacted.

Sincerely yours,

WARREN OLNEY III, *Director.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., February 28, 1962.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on identical bills S. 20 and H.R. 1960 (H.R. 1960 passed the House on July 10, 1961) to amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the U.S. district courts, and for other purposes, and related bill S. 717 to authorize civil actions for the review of administrative determinations as to the use of lands of the United States for grazing purposes to be instituted in judicial districts in which such lands are situated, and for other purposes.

The pending companion bills, H.R. 1960 and S. 20, are general in scope and as to purpose, similar to S. 717 which relates to determinations concerning the issuance of grazing permits only. If the companion bills, or modified versions thereof, are passed by the Congress, consideration of S. 717 would appear to be unnecessary because the problems it seeks to meet are adequately covered in the broader proposals.

Section 1 of the companion bills (H.R. 1960 and S. 20) would extend to all U.S. district courts jurisdiction to issue writs in the nature of mandamus.

This Department questions the wisdom of authorizing district courts generally to mandamus Cabinet officers and other Government officials who are presently suable, if at all, only in the District of Columbia. However, if either S. 20 or H.R. 1960 is to be given further consideration by the Congress, the provisions of the bills should be clarified.

While the stated purpose of section 1 is to extend the mandamus powers of the District Court for the District of Columbia to the several district courts throughout the Nation, the language of the section is dangerously broad. Courts interpreting the mandate to require a Federal officer "to do his duty" might find a much greater power intended than the existing mandamus power in the District of Columbia court to which the proposed statute does not refer explicitly or implicitly. We think it essential that the section refer to the "mandamus" power and specifically limit its exercise to ministerial duties owed the plaintiff. Should the language be applied to discretionary acts of Federal officers, the judicial branch would be invading the executive or legislative function in violation of the doctrine of separation of powers. Clearly, the judiciary can compel executive action (or legislative action) only where there is an absolute obligation to act in connection with which no discretion exists.

The venue provision in section 2 covers an entirely different subject. Under present law, after one has exhausted his administrative remedies, the final decision is generally made by an official residing in the District of Columbia. To challenge the legality of that decision, the officer residing in Washington must be sued in Washington. The purpose of this section of the bill is to have officers who live in the Capital subject to suit throughout the country to the same extent that they can now be sued in the District. In effect, then, this venue provision would do away with the defense that a superior officer is an indispensable party because, with a grant of venue, a superior officer can be made a party.

The Administrative Procedure Act contains an expression of existing congressional purpose relating to review of the acts of Federal officers. For venue reasons, however, practically all proceedings for review under that act must be brought in the District of Columbia. We believe that less confusion will result by tying in this simple venue grant directly to the Administrative Procedure Act. This unquestionably eliminates suits for money judgments against officers, eliminates any question that a discretionary action can be reviewed, and requires an exhaustion of administrative remedies. It will do away with any possible future contention that the legislation was intended to add any additional substantive right of appeal. It would thus achieve what we understand to be the purpose of the sponsors within the framework of existing legislation.

The pending bill would place venue in any judicial district "wherein the plaintiff resides." We recommend that this be changed to grant venue in any judicial district "in which the cause of action arose, or in which any property involved in the action is situated." The principal demand for this proposed legislation comes from those who wish to seek review of decisions relating to public lands, such as the awarding of oil and gas leases, consideration of land patent applications and the granting of grazing rights or other interests in the public domain. The applicants may reside in any State, or several States of the Union, and it would be unwise to have the Secretary sued in Maine with re-

spect to an oil and gas lease in Wyoming. On the other hand, there is no objection to permitting one who has done business involving land in Wyoming to bring any suit concerning that land in the State where it is located.

Without recommending legislation in this field, we have drafted revised language to accomplish the purposes stated for the subject bills, which contains minimal safeguards to the national interest in management of the public domain, in maintenance of separation of powers, and to minimize fruitless litigation. As to the provision conferring mandamus jurisdiction, it is recommended that a new section 1361 of title 28 of the United States Code proposed to be added by section 1 of S. 20 and H.R. 1960 be revised to read as follows:

“§ 1361. Action in the nature of mandamus

“The district courts shall have jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or of any agency thereof to perform a ministerial duty owed to the plaintiff under a law of the United States.”

As to the provision for venue, it is recommended that the new subsection (e) proposed to be added to section 1391 of title 28 of the United States Code by section 2 of the bill be revised to read as follows:

“(e) Except where a special statutory proceeding for judicial review relevant to the subject matter is provided in any court specified by statute, a civil action for judicial review of agency action under section 10 of the Administrative Procedure Act (60 Stat. 243, § 10; 5 U.S.C. § 1009) may be brought in any judicial district as above provided or in any judicial district in which the cause of action arose, or in which any property involved in the action is situated.

“The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that delivery of the summons and complaint to the officer as required by the rules maybe made by certified mail beyond the territorial limits of the district in which the action is brought.”

In order that there may be no misunderstanding in connection with administration of the tax laws of the United States, it is recommended that an additional section be added to the bill as follows:

“§ 3. This Act shall not apply to proceedings brought with respect to Federal taxes.”

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

CHAPTER 85, TITLE 28, UNITED STATES CODE

Chapter 85.—DISTRICT COURTS; JURISDICTION

Sec.

* * *

§ 1361. *Action to compel an officer of the United States to perform his duty.*

* * * * *

§ 1361. *Action to compel an officer of the United States to perform his duty.*

The district courts shall have original jurisdiction of any action to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff or to make a decision in any matter involving the exercise of discretion.

* * * * *

CHAPTER 87, TITLE 28, UNITED STATES CODE

§ 1391. Venue generally.

* * *

(e) *A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.*

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

Calendar No. 1953

87TH CONGRESS
2^D SESSION

H. R. 1960

[Report No. 1992]

IN THE SENATE OF THE UNITED STATES

JULY 11, 1961

Read twice and referred to the Committee on the Judiciary

AUGUST 31, 1962

Reported by Mr. CARROLL, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 85 of title 28 of the United States Code is
4 amended—

5 (a) By adding at the end thereof the following new
6 section:

7 “§ 1361. Action to compel an officer of the United States to
8 perform his duty

9 “The district courts shall have original jurisdiction of
10 any action to compel an officer or employee of the United

1 States or any agency thereof to perform his ~~duty~~ *a duty*
 2 *owed to the plaintiff or to make a decision in any matter*
 3 *involving the exercise of discretion.”*

4 (b) By adding at the end of the table of sections for
 5 chapter 85 of title 28 of the United States Code the follow-
 6 ing:

“1361. Action to compel an officer of the United States to perform his
 duty.”

7 SEC. 2. Section 1391 of title 28 of the United States
 8 Code is amended by adding at the end thereof the following
 9 new subsection:

10 ~~“(e) A civil action in which each defendant is an offi-~~
 11 ~~cer or employee of the United States or any agency thereof~~
 12 ~~acting in his official capacity or under color of legal authority,~~
 13 ~~or an agency of the United States, may be brought in any~~
 14 ~~judicial district where a plaintiff in the action resides, or~~
 15 ~~in which the cause of the action arose, or in which any~~
 16 ~~property involved in the action is situated.~~

17 “(e) *A civil action in which each defendant is an officer*
 18 *or employee of the United States or any agency thereof*
 19 *acting in his official capacity or under color of legal authority,*
 20 *or an agency of the United States, may, except as otherwise*
 21 *provided by law, be brought in any judicial district in which:*
 22 *(1) a defendant in the action resides, or (2) the cause of*
action arose, or (3) any real property involved in the action

1 *is situated, or (4) the plaintiff resides if no real property is*
2 *involved in the action.*

3 “The summons and complaint in such an action shall be
4 served as provided by the Federal Rules of Civil Procedure
5 except that the delivery of the summons and complaint to
6 the officer or agency as required by the rules may be made
7 by certified mail beyond the territorial limits of the District
8 in which the action is brought.”

Passed the House of Representatives July 10, 1961.

Attest:

RALPH R. ROBERTS,

Clerk,

AN ACT

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

JULY 11, 1961

Read twice and referred to the Committee on the
Judiciary

AUGUST 31, 1962

Reported with amendments

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Sept. 7, 1962
For actions of Sept. 6, 1962
87th-2d, No. 160

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HIGHLIGHTS: Sen. Hickenlooper criticized and Sen. Humphrey defended Secretary's pledge of commodities to United Nations. Senate passed tax revision bill. Rep. Libonati commended forestry demonstration in Richmond, Va.

HOUSE

1. APPROPRIATIONS. Conferees were appointed on H. R. 12648, the agricultural appropriation bill. Senate conferees have already been appointed. p. 17573
The "Daily Digest" states that "Conferees met in executive session to resolve the differences between the Senate- and House-passed versions of H. R. 12648, fiscal 1963 appropriations for the Department of Agriculture, but did not reach final agreement, and will meet again tomorrow." p. D813
2. FORESTRY. Rep. Libonati described and commended a recent forestry demonstration in Richmond, Va. pp. 17609-11
3. BREAD. The Ways and Means Committee reported with amendment H. R. 3985, to amend the Tariff Act of 1930 to impose a duty upon the importation of bread (H. Rept. 2325). p. 17612
4. SOCIAL SECURITY; FARMERS. Rep. Rhodes, Pa., inserted an article about a farmer getting social security disability benefits, "Social Security Helps Farmer."

p. 17576

5. ATOMIC ENERGY. Received from the President the annual report of U. S. participation in Atomic Energy Agency (H. Doc. 538). p. 17582, p. 17614
6. LEGISLATIVE PROGRAM. Rep. Albert announced that H. R. 12365, health clinics for migratory farmworkers, will be considered on Mon., and S. 4, Padre Island National Seashore, will be brought up on Tues. p. 17575
7. ADJOURNED until Mon., Sept. 10. p. 17612

SENATE

8. FARM PROGRAM; PUBLIC LAW 480. Sen. Hickenlooper criticized Secretary Freeman's pledge of commodities to the United Nations food program, questioned whether the Secretary has authority under Public Law 480 to pledge commodities for this purpose, and contended it was "the first step in relinquishing our control over the distribution of our surplus food and agricultural commodities." Sen. Humphrey defended the Secretary's action, stating that "I believe it falls full well within the scope of authority granted by the Congress to the executive branch." pp. 17668, 17710
9. TAXATION. By a vote of 59 to 24, passed with amendments H. R. 10650, the proposed Revenue Act of 1962. Conferees were appointed. pp. 17620-1, 17624-6, 17632-41, 17648, 17650-9
10. MINING. Passed as reported S. 3451, to authorize the Secretary of the Interior to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed. pp. 17700-5
11. LAW; COURTS. Passed as reported H. R. 1960, to make it possible to bring actions against Government officials and agencies in U. S. district courts outside D. C., which, because of certain existing limitations on jurisdiction and venue, may now be brought only in the U. S. District Court for D. C. pp. 17699-700
12. CREDIT. The "Daily Digest" states that the Subcommittee on Production and Stabilization of the Banking and Currency Committee "by a vote of 5 to 4, defeated a motion to report to the full committee S. 1740, to require the disclosure of finance charges in connection with extensions of credit." p. D812
13. WILDLIFE. Passed over, at the request of Sen. Mansfield, H. J. Res. 489, to provide for protection of the golden eagle. p. 17696
14. RECLAMATION. The Interior and Insular Affairs Committee reported without amendment H. R. 11164, to approve an amendatory repayment contract negotiated with the Quincy Columbia Basin Irrigation District and authorize similar contracts with any of the other Columbia Basin irrigation districts (S. Rept. 2002). p. 17614
15. PERSONNEL. Agreed to as reported S. Con. Res. 53, declaring the sense of Congress that all official air travel by employees and officials of the Federal Government should be performed on U. S.-flag carriers except under the most limited circumstances. pp. 17693-4
Sen. Byrd, Va., submitted the report of the Joint Committee on Reduction of Nonessential Federal Expenditures on Federal employment and pay for July 1962. pp. 17615-9
Sen. Hickenlooper criticized the recent increase in the number of Federal employees and suggested that a moratorium be declared on the filling of all

Daniels. Joseph Patrick, Jr., found a bomb fuse under the house, and, not knowing what it was, told the other children he was going to throw it against the house. When he threw it and it struck the house, the fuse exploded. Joseph Patrick, Jr., was killed, and the other children were wounded. The report sent to the committee on the bill by the Department of the Army states that the fuse which exploded in this manner was presumed to have been one of a group of approximately 200 bomb fuses which were thrown by Army personnel into Arbuckle Creek at the boundary of the Avon Park Army Airfield.

"The Army report states that at a period estimated to be September or October 1945, Army personnel of unknown identity deposited approximately 200 bomb fuses, AN-M103 and AN-M101A2, in Arbuckle Creek, a stream of water flowing along the boundary of Avon Park Army Airfield, Fla. Apparently this method of disposal was adopted to expedite clearing an ordnance area. The fuses were in their original containers and undamaged when thrown into the deep water from a bridge which constituted a secondary entrance to the airfield. The water in Arbuckle Creek at that time was of sufficient depth that the fuses were submerged and unobserved. However, a severe drought in the spring of 1946 left several above the water level. Some fishermen evidently discovered the fuses but did not recognize them as such (even though labels were still on most of the containers), and carried some home as souvenirs.

"One of them, being used as a toy, exploded on May 25, 1946, fatally injuring Richard Jones, the 3-year-old son of Mr. and Mrs. Alton Jones of Avon Park. Mr. Jones filed a claim in the amount of \$1,000 for the damages sustained on account of the death of his son, Richard Jones. The claim was settled administratively, and on March 25, 1948, a check in the amount of \$1,000 was mailed to Mr. Jones in care of his attorney.

"In cooperation with the local police, the following measures were taken in an effort to prevent any recurrence of the above-cited tragedy:

"(a) All bomb fuses which could be located were collected and arrangements were made for disposal of them by demolition, and

"(b) A campaign was conducted through newspaper articles and school announcements in Avon Park and nearby communities to locate any additional fuses and for collection of any explosives.

"Sometime during the month of April 1946 a fisherman, Moses Moore, went fishing in Arbuckle Creek, just south of the bridge, on the west bank. While thus engaged, he picked an object out of the creek that resembled a tin can, approximately 18 inches long. The can was partially opened and he removed its contents, subsequently identified as a nose bomb fuse, AN-M103. He gave it to one P. J. Daniels, who later threw the fuse in the lot behind the house in which he was living, and he did not see it again.

"On November 9, 1946, the five children described above were injured in the explosion of the fuse found under the house previously occupied by P. J. Daniels.

"The Army report reflects the fact that the military recognizes that the Army personnel who threw the fuses into the creek were not acting in a proper and responsible manner. In a letter from the commanding officer, Headquarters, Avon Park Army Airfield, Avon Park, Fla., dated November 13, 1946, to the commanding general, MacDill Field, Tampa, Fla.—subject: Preventive action taken regarding accidents occurring at Avon Park, Fla.—it was stated in part as follows:

"4. It is recognized that the method of disposal of fuses adopted by former personnel assigned to this station was not in accordance with regulations."

"A board of officers was convened at the Army Airbase, MacDill Field, Fla., on November 19, 1946, to inquire into this matter. The report of that board stated, concerning the responsibility of the United States for the accident:

"1. The bomb fuse which exploded causing the death of John [Joseph] Patrick, Jr., and injuries to Shirley Ann Smith, Betty Anne Smith, Stanley Smith, and James Edward Harris [Junior] is assumed to be the property of the U.S. Government under authority of paragraph 143, article of war 83, Manual for Courts-Martial, which states in part: 'Although there may be no direct evidence that the property was military property belonging to the United States, still circumstantial evidence such as evidence that the property shown to have been lost, spoiled, damaged, or wrongfully disposed of by the accused was of a type and kind issued for use in, or furnished and intended for the military service, might warrant the court in inferring that it was such military property.'"

"The board also noted that the Army made prompt attempts to remove fuses and warn the public as to the danger when a child was killed in May of 1946. However, the second explosion involving the children named in this bill did occur, and this committee feels that there is a moral responsibility on the part of the Government to provide the relief as set forth in the amendment recommended in the Army report. That report sets out in detail the extent of the injuries and the medical expenses which resulted from the explosion. From an examination of these facts the committee has concluded that the amounts recommended by the Army are clearly justified. Accordingly it is recommended that the amended bill be considered favorably."

The committee is in agreement with the conclusions reached by the House Judiciary Committee and the Department of the Army. The investigation made by the Department of the Army reveals that the Government has a taint of responsibility for the death and injuries sustained by the claimants in the explosion of the bomb fuse. The committee is of the view that there is a moral obligation upon the Government to make some financial contribution for the consequences of this explosion. Accordingly, the committee recommends favorable consideration of H.R. 4635, without amendment.

JURISDICTION OF U.S. DISTRICT COURTS

The Senate proceeded to consider the bill (H.R. 1960) to amend ch. 85 of title 28, United States Code, relating to the jurisdiction of the U.S. District Courts and for other purposes, which had been reported from the Committee on the Judiciary, with amendments, on page 2, line 1, after the word "perform," to strike out "his duty" and insert "a duty owed to the plaintiff or to make a decision in any matter involving the exercise of discretion"; and after line 9, to strike out:

(c) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may be brought in any judicial district where a plaintiff in the action resides, or in which the cause of the action arose, or in which

any property involved in the action is situated.

And, in lieu thereof, to insert:

(e) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1992), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

This legislation does not create new liabilities or new causes of action against the U.S. Government. The bill, as amended, is intended to facilitate review by the Federal courts of administrative actions. To attain this end, the bill does two things. First, it specifically grants jurisdiction to the district courts to issue orders compelling Government officials to perform their duties and to make decisions in matters involving the exercise of discretion, but not to direct or influence the exercise of the officer or agency in the making of the decision. Secondly, it broadens the venue provisions of title 28 of the United States Code to permit an action to be brought against a Government official in the judicial district (1) where a defendant resides, or (2) in which the cause of action arose, or (3) in which any real property involving the action is situated, or (4) if no real property is involved in the action, where the plaintiff resides. This bill will not give access to the Federal courts to an action which cannot now be brought against a Federal official in the U.S. District Court for the District of Columbia.

Where a statute does not specifically provide for review of the actions of a Government official, the aggrieved party may obtain judicial review through invoking one of several nonstatutory proceedings. Which of these he chooses turns upon the relief sought. In certain cases, the relief desired can be obtained only by compelling a Government official to perform an act which he is required to do by statute but which he has nevertheless failed to do. Traditionally, the appropriate remedy in that case has been a writ of mandamus. However, unless jurisdiction is otherwise acquired, the U.S. district courts have long disclaimed jurisdiction to hear petitions for mandamus.

The single exception to the general proposition that the U.S. district courts do not have jurisdiction over original actions for mandamus is the U.S. District Court for the District of Columbia. This court, in addition to being a Federal court, is also charged with the enforcement of domestic law. Its jurisdiction is derived not only from title 28 but also from the laws of the State of Maryland, which governed the area ceded to the District of Columbia in 1801. That body of law included jurisdiction to issue writs of mandamus in original proceedings.

The result of this historic accident has been that a person who seeks to have a Fed-

eral court compel a Federal official to perform a duty of his office must bring his action in the District Court for the District of Columbia. This the committee considers an unfair imposition upon citizens who seek no more than lawful treatment from their Government.

The problem of venue in actions against Government officials for judicial review of official action arises when the action must be brought against supervisory officials or agency heads whose official residences are, with few exceptions, in the District of Columbia. The need to bring an action against an agency head rather than an official in the field may arise either because of a statute authorizing such a suit or because of the doctrine of indispensable parties. The question of when a superior officer is an indispensable party is not altogether clear from the cases. Suffice it to say that if it is determined that a superior officer whose official residence is in the District of Columbia is an indispensable party, that action must be brought in the U.S. District Court for the District of Columbia.

The venue problem also arises in an action against a Government official seeking damages from him for actions which are claimed to be without legal authority but which were taken by the official in the course of performing his duty.

The committee is of the view that the current state of the law respecting venue in actions against Government officials is contrary to the sound and equitable administration of justice. Frequently, the administrative determinations involved are made not in Washington but in the field. In either event, these are actions which are in essence against the United States. The Government official is defended by the Department of Justice whether the action is brought in the District of Columbia or in any other district. U.S. attorneys are present in every judicial district. Requiring the Government to defend Government officials and agencies in places other than Washington would not appear to be a burdensome imposition.

On the other hand, where a citizen lives thousands of miles from Washington, where the property involved is located outside of the District of Columbia, where the cause of action arose elsewhere, to require that the action be brought in Washington is to tailor our judicial processes to the convenience of the Government rather than to provide readily available, inexpensive judicial remedies for the citizen who is aggrieved by the workings of Government.

However, disregarding considerations of convenience, broadening of the venue provisions of title 28 to permit these actions to be brought locally is desirable from the standpoint of efficient judicial administration. Frequently, these proceedings involve problems which are recurrent but peculiar to certain areas, such as water rights, grazing land permits, and mineral rights. These are problems with which judges in those areas are familiar and which they can handle expeditiously and intelligently.

In addition, the present venue provision results in a concentration of these actions in the District Court for the District of Columbia, a court which is already heavily burdened. Court congestion is increased and substantial delays are incurred. The broadened venue provided in this bill will assist in achieving prompt administration of justice by making it possible to bring these actions in courts throughout the country, many of which are not nearly as burdened as the District Court for the District of Columbia.

To achieve these results, section 2 of this bill amends section 1391 of title 28 of the United States Code to provide that an action may be brought against an officer or an em-

ployee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, in any judicial district where a defendant resides, or in which the cause of action arose, or in which any real property involving the action is situated, or if no real property is involved in the action, where the plaintiff resides.

The Department of Justice in its report on the bill expressed concern that the bill might be interpreted to give the district courts jurisdiction to order a Government official to act in a manner contrary to his discretion. The committee, therefore, has adopted the amendment set forth to section 1 which specifies that the court can only compel the official or agency to act where there is a duty, which the committee construes as an obligation, to act or, where the official or agency has failed to make any decision in a matter involving the exercise of discretion, but only to order that a decision be made and with no control over the substance of the decision. The Department of Justice also expressed concern that where the plaintiff resides in a different judicial district than that in which real property involved in the action is situated, it would not be in the interest of an expeditious proceeding to have the action brought in the judicial district where the plaintiff resides. The committee considered this suggestion meritorious and approved the amendment set out to section 2 of the bill. The committee also approved an amendment to section 2 of the bill providing that the provision with respect to venue should apply only to the extent that it is not otherwise provided by law. Examples of such proceedings covered by this provision are proceedings brought with respect to Federal taxes and under section 5 of the act of September 26, 1961, relating to immigration.

The words "original jurisdiction" as used in section 1 of the bill are not intended to limit the existing powers of district courts to issue mandatory injunctions in aid of jurisdiction otherwise acquired. Likewise, there is no intent that the bill affect the doctrine of exhaustion of administrative remedies.

As stated in the House report, the bill does not define the term "agency," but the committee agrees that it should be taken to mean any department, independent establishment, commission, administration, authority, board, or bureau of the United States, or any corporation in which the United States has a proprietary interest.

The report of the Judicial Conference of the United States, as incorporated in the letter from Warren Olney III, Director of the Administrative Office of the U.S. Courts, affirmatively recommending the enactment of H.R. 1960 is attached hereto and made a part hereof. The report from the Department of Justice to the Judiciary Committee of the U.S. Senate on H.R. 1960 and its companion Senate bill, S. 20, is also attached hereto and made a part hereof.

NATIONAL CULTURAL CENTER WEEK

The joint resolution (S.J. Res. 214) authorizing the President of the United States to designate the period from November 26, 1962, through December 2, 1962, as National Cultural Center Week was considered, ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Resolved by the Senate and House Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and requested to issue a proclamation des-

ignating the period from November 26, 1962, through December 2, 1962, as National Cultural Center Week; urging all persons, organizations, and governmental agencies involved in fostering the performing arts in this Nation to publicize and observe such week; and calling upon the Governors of the States to join in promoting the National Cultural Center campaign.

The preamble was agreed to.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1991), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The purpose of the joint resolution is to authorize and request the President of the United States to issue a proclamation designating the period from November 26, 1962, through December 2, 1962, as National Cultural Center Week.

RESIDENTIAL OCCUPANTS OF UNPATENTED MINING CLAIMS

The bill (S. 3451) to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed and for other purposes was announced as next order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs, with amendments, on page 1, line 3, after the word "to", to strike out "any" and insert "an"; in line 5, after the word "Secretary", to strike out "after due process,"; in the same line, after the word "invalid", to insert "an interest in"; in line 8, after the word "to", to strike out "any" and insert "an"; on page 2, line 5, after the word "invalidated", to strike out "after due process"; in line 20, after the word "a", to strike out "seasonal or year round" and insert "citizen of the United States or a person who has declared his intention to become such who is a"; in line 22, after the word "of", to strike out "January 10, 1962, of land" and insert "July 23, 1962, of improvements"; in line 25, after the word "placed", to insert "which constitutes for him a principal place of residence, and he and his predecessors in interest have been in possession for not less than seven years prior to July 23, 1962"; on page 3, line 11, after the word "necessary", to insert a colon and "Provided further, That in all appropriate cases Federal departments shall consult with county and other concerned local government subdivisions or agencies to determine the effect of a proposed conveyance upon the services of government which might be then required."; in line 20, after the word "the", to strike out "applicant" and insert "applicant"; in line 23, after the word "use", to strike out "will" and insert "may"; in line 25, after the word "a", to strike out "preference"; on page 4, line 6, after the word "Said", to strike out "preference"; in line 7, after the word

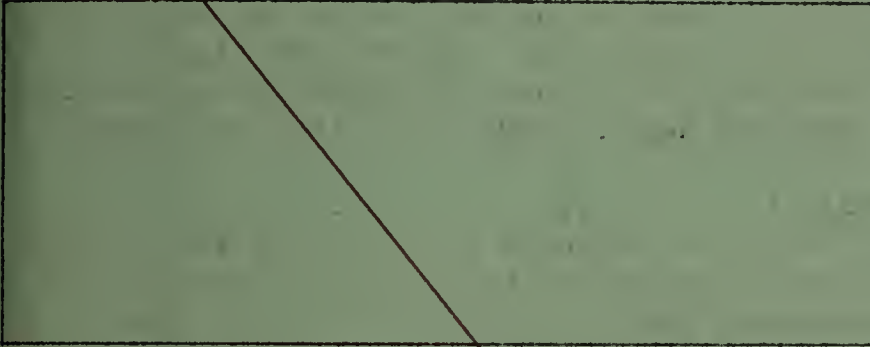
Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Sept. 21, 1962
For actions of Sept. 20, 1962
87th-2d No. 170



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HIGHLIGHTS: House agreed to conference report on farm bill. Senate agreed to vote on farm bill conference report Tues., 9-25, 3 p.m. Sen. Williams, Del., charged certain USDA employees abuse leave privileges. House passed foreign aid appropriation bill. House Rules Committee cleared bill to further restrict employment of children in agriculture. Rep. Aspinall defended his committee's action on wilderness bill. Sen. Curtis criticized effects of rail strike on shipment of farm products in Midwest. Senate committee received permission to report pay bill. Sen. Engle commended Calif. counties four-point program to aid lumber industry. Rep. Cooley commended Secretary Freeman and inserted article.

HOUSE

1. FARM PROGRAM. By a vote of 202 to 197, agreed to the conference report on H. R. 12391, the proposed Food and Agriculture Act of 1962. See Digest No. 167 for a summary of this bill. pp. 18989-9014
2. FOREIGN TRADE. Conferees were appointed on H. R. 11970, the proposed Trade Expansion Act of 1962. Senate conferees have been appointed. p. 18987
3. MIGRANT LABOR. The "Daily Digest" states that the Rules Committee "Granted an open rule, with 1 hour of debate, on S. 1123, to amend the Fair Labor Standards Act of 1938, to extend the child labor provisions thereof to certain children employed in agriculture," and that the committee "Denied a rule on S. 1126, to provide for the registration of contractors of migrant agricultural workers." p. D873

4. MIGRATORY BIRDS. The Merchant Marine and Fisheries Committee voted to report (but did not actually report) with amendment S. 3504, to provide for alternate representation of secretarial officers on the Migratory Bird Conservation Commission. p. D873
5. WILDERNESS. Rep. Aspinall defended his committee's action on H. R. 776, the wilderness bill, and said, "... the extremists have ... created an atmosphere which makes impossible the enactment of any wilderness legislation during this Congress." pp. 19079-82
6. TRANSPORTATION. Received the conference report on S. 320, to amend the Interstate Commerce Act so as to permit State commissions to grant the right to motor common carriers operating within a single State to engage in interstate or foreign operations within the State (H. Rept. 2439). pp. 18987-8, 19105
7. FOREIGN AID APPROPRIATION BILL, 1963. By a vote of 249 to 144, passed with amendment this bill, H. R. 13175. This bill includes \$225,000,000 for development grants, \$30,000,000 for investment guaranties, \$525,000,000 for Alliance for Progress, \$775,000,000 for development loans, \$52,000,000 for the Peace Corps, and \$2,000,000 for the International Monetary Fund. pp. 19030-68
(with amendments)
8. LAW; COURTS. Concurred in the Senate amendments to H. R. 1960, to make it possible to bring actions against Government officials and agencies in U. S. district courts outside D. C., which, because of certain existing limitations on jurisdiction and venue, may now be brought only in the U. S. District Court for D. C. pp. 18988-9
9. EDUCATION. By a vote of 214 to 136, recommitted with instructions the conference report on H. R. 8900, the proposed College Academic Facilities and Student Assistance Act. pp. 19015-30
10. MINERALS. Received the conference reports on H. R. 8134, to effect a statutory withdrawal of certain former Taylor Grazing Act lands near Phoenix, Ariz., from all forms of entry under the public land laws (H. Rept. 2451), and H. R. 10566, to provide for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, Ariz. (H. Rept. 2452). pp. 10969-70, 19105
Concurred in the Senate amendments to H. R. 11266, to extend to Alaska the provisions governing the disposition of public lands under the townsite laws so as to permit tracts of land in Alaska to be sold subject to a reservation of the U. S. of coal, oil, and gas. This bill will now be sent to the President. p. 19073
11. CLAIMS. Received from the President supplemental appropriation estimate to pay claim and judgments against the U. S. (H. Doc. 558). p. 19105
12. RECLAMATION. Passed without amendment S. 1023, to provide for the construction, operation, and maintenance of additional features of the Talent division of the Rogue River Basin reclamation project, Ore. This bill will now be sent to the President. p. 19070
Passed as reported H. R. 7811, to amend the act authorizing the Crooked River Federal reclamation project to provide for the irrigation of additional lands, and S. 1060, to authorize the Secretary of Interior to construct, operate, and maintain the Oroville-Tonasket unit of the Okanogan-Similkameen division, Chief Joseph Dam project, Wash. pp. 19070-2
13. GOVERNMENT OPERATIONS. Rep. Dawson submitted the 24th Report of the Committee on Government Operations (H. Rept. 2440). p. 19105

14. MONOPOLIES. The Subcommittee No. 5 of the Judiciary Committee voted to report to the full committee with amendment H. R. 3465, to reaffirm the national public policy and purposes of Congress in enacting the Robinson-Patman Anti-Price-Discrimination Act. p. D873
15. TRADE FAIRS. The Merchant Marine and Fisheries Committee voted to report (but did not actually report) with amendment S. 3389, to promote the foreign commerce of the U. S. through the use of mobile trade fairs. p. D873
16. COMPACTS. The Merchant Marine and Fisheries Committee voted to report (but did not actually report) S. 3431, to consent to the amendment of the Pacific Marine Fisheries Compact and to the participation of certain additional States in such compact in accordance with the terms of such amendment. D. 873

SENATE

17. FARM PROGRAM. Agreed to a unanimous-consent agreement by Sen. Mansfield to consider the conference report on H. R. 12391, the farm bill, Tues., Sept. 25, and to vote on adoption of the report at 3 p.m. that day. pp. 18959-60
Sen. Curtis criticized the President for not taking action to end the Chicago and North Western Railway strike which is affecting the shipment of agricultural commodities, urged enactment of legislation, if necessary, to end the strike, and inserted several items on the strike. pp. 18892-4
18. PERSONNEL. Sen. Williams, Del., stated that "early in April it was called to my attention that certain employees of the Department of Agriculture were abusing their annual and sick leave and were padding their official travel vouchers," and inserted his correspondence with the Civil Service Commission over one alleged case in BEA p. 18902
Sen. Johnston, on behalf of the Post Office and Civil Service Committee, ^{this} was granted permission to file a report on the Federal pay and postal rate bill weekend during adjournment of the Senate. p. 18980
19. FORESTRY. Sen. Engle commended the four-point program proposed by the boards of supervisors of nine northern Calif. counties to aid the lumber industry and inserted their resolution on the proposal. p. 18900
20. RECLAMATION. Passed without amendment H. R. 11164, to approve an amendatory repayment contract negotiated with the Quincy Columbia Basin Irrigation District and authorize similar contracts with any of the Columbia Basin irrigation districts (pp. 18953-60). This bill will now be sent to the President. By a vote of 13 to 61, rejected a proposed amendment by Sen. Miller to prohibit for 10 years the use of water from the project for the production on newly irrigated lands of any basic agricultural commodity in surplus supply (pp. 18953-9). Consideration of a similar bill, S. 3162, was indefinitely postponed (p. 18960).
Passed without amendment H. R. 575, to authorize the Secretary of the Interior to construct the upper division of the Baker reclamation project, Ore. This bill will now be sent to the President. pp. 18960-72
21. LAW; COURTS. Concurred in the House amendments to H. R. 1960, to make it possible to bring actions against Government officials and agencies in the U.S. district courts outside D. C., which, because of certain existing limitations on jurisdiction and venue, may now be brought only in the U. S. District Court for D. C. This bill will now be sent to the President. p. 18972

22. STOCKPILING. Passed without amendment H. R. 12416, to waive the statutory requirement for a 6-month waiting period before GSA is authorized to dispose of 4,000 long tons of chestnut tannin extract from the national stockpile. This bill will now be sent to the President. pp. 18972-3
Agreed to without amendment H. Con. Res. 509, expressing Congressional approval for the disposal by GSA of approximately 12,245 tons of chestnut tannin extract from the national stockpile. p. 18973
23. MINERALS. Conferees were appointed on S. 3451, to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed. House conferees have not been appointed. pp. 18918-9
24. LEGISLATIVE BRANCH APPROPRIATION BILL, 1963. Agreed to the conference report on this bill, H. R. 11151, and acted on amendments in disagreement. This bill will now be sent to the President. pp. 18914-6
25. NOMINATIONS. Confirmed the nomination of W. Willard Wirtz to be Secretary of Labor. pp. 18884-5
26. FISHERIES. The Commerce Committee reported S. Res. 392, expressing the sense of the Senate that the President should propose an International Conference on the Conservation of Fishery Resources. p. 18885
27. TRANSPORTATION. Sen. Bartlett inserted an article commending Sen. Magnuson for receiving the thirteenth annual National Transportation Award of the National Defense Transportation Association. pp. 18897-8
28. LEGISLATIVE PROGRAM. Sen. Mansfield stated that the school lunch fund apportionment bill will probably be considered Fri., Sept. 21. p. 18959

ITEMS IN APPENDIX

29. FARM PROGRAM; PERSONNEL. Extension of remarks of Rep. Cooley commending Secretary Freeman, stating that "Orville Freeman has provided fine leadership and by his intelligent devotion to duty he has endeared himself to the Members of Congress and to his countrymen," and inserting Drew Pearson's article, "Orville L. Freeman, the Farmers Champion." p. A6970
30. NOMINATIONS. Extension of remarks of Rep. Burke stating that in selecting Anthony J. Celebrezze as Secretary of HEW, President Kennedy has "added another truly outstanding member to his official family." pp. A6978-9

BILLS INTRODUCED

31. FARM PROGRAM. H. R. 13183, by Rep. Clem Miller, to amend the Agricultural Adjustment Act of 1933 as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 as amended; to Agriculture Committee.
32. RECLAMATION. H. R. 13184, by Rep. Sisk, to provide for the payment of compensation, including severance damages, for rights of way acquired by the United States in connection with reclamation projects the construction of which commenced after January 1, 1961; to Interior and Insular Affairs Committee.
33. WATER POLLUTION. H. R. 13186, by Rep. Blatnik, to amend the Federal Water Pollution Control Act to provide financial assistance to municipalities and others for the separation of combined sewers; to Public Works Committee. Remarks of author, p. A6968-9

supplement. The products we grow are cattle, sheep, hay, and pasture. Supplemental water would increase the efficiency of our operation, controlling floodwater would conserve our resources, and the two together would benefit all our valley, our State, and logically the Nation.

I hope your committee will take a good look (approving) at our request—we think it is sound and worthy of authorization.

Yours truly,

FRED J. WARNER.

BAKER, OREG., March 14, 1961.

HON. CLINTON P. ANDERSON,
Chairman of Committee on Interior and Insular Affairs, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SIR: As a livestock producer of Baker Valley I urge you to do everything possible to gain authorization of our Mason Dam project.

I believe irrigation will greatly stabilize the livestock industry and general economy of this area.

Yours truly,

WILLIAM E. WIDMAN.

CALIFORNIA-PACIFIC UTILITIES CO.,
Baker, Oreg., December 13, 1961.

HON. CLINTON P. ANDERSON,
Committee on Interior and Insular Affairs,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SIR: We urge that you do everything possible for the passing of the bill authorizing construction of the proposed Mason Dam in this session of Congress.

This irrigation project is of grave importance to the economy of our entire area.

The waste of a natural resource so vital to our area could be eliminated by the construction of this dam.

L. G. GRAY,
District Manager.

BAKER, OREG., February 22, 1961.

HON. CLINTON P. ANDERSON,
Committee on Interior and Insular Affairs,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: I'm writing this letter in behalf of the proposed Mason Dam in Baker Valley. I feel it would be of great benefit to the ranchers and farmers of this valley. We have floodwater from Powder River which lasts until the first of July, then the ranchers are left with no irrigation water.

If this water could be stored in the proposed Mason Dam, it would store enough water for a full supply of water to irrigate all the land that has now only one-half enough water to grow the crops that could be grown with a full supply of water.

One could grow 50 to 60 percent more hay and grass, which this valley surely needs to meet the demands for pasture and winter feed for the fine beef and dairy cattle grown in this valley, as well as other crops that could be grown suitable to the soil and climate conditions of Baker Valley.

I have drilled two irrigation wells on my ranch and with the wells as a supplemental water source, I have grown good crops of potatoes and sugarbeets and when the alfalfa hay is irrigated from wells, I get one extra good cutting of hay and a good pasture.

The proposed dam would benefit the whole valley; the city of Baker would benefit from the extra population that would naturally occur when the large farms would be sold in smaller units and would be farmed in a diversified manner.

The growing of sugarbeets in Baker Valley would by their byproducts, increase the feeding and finishing our beef cattle instead of shipping the cattle as feeders to California

and other States to be fattened and then shipped back to Oregon as finished products.

Another reason I feel the Mason Dam, as proposed in the Powder River, should be built is the conservation of water, something all of us are becoming conscious of today, and at this time if we of the Baker Valley don't protect our rights to the water of Powder River, we might lose those rights. As others also know, the great value of the water that is running to waste down Powder River, therefore, we ranchers and the city people need the dam on Powder River, the proposed Mason Dam, to protect our rights to this water.

Yours truly,

CONRAD ALLEN.

COMMERCIAL WELDING CO., INC.,
Baker, Oreg., April 13, 1961.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR: As we are steel fabricators of ranch equipment in this area, I am writing to ask if you would do all possible to help us in this area get the OK for the construction of the Mason Dam here in Baker County.

We work from 25 to 30 people and we feel that building the Mason Dam would naturally increase our work and possibly more could be employed. Also, I would like to point out that more than 90 percent of our employees have expressed a high degree of enthusiasm regarding the recreational facilities which will be made available to them as well as to all the other people of eastern Oregon and surrounding communities.

In closing, we want you to know that we would sincerely appreciate any effort that you would put forth to help us on the Mason Dam project.

Very truly yours,

JACK FROST,
Secretary-Treasurer.

BRITTON EQUIPMENT CO.,
Baker, Oreg., March 14, 1961.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. ANDERSON: As a dealer in farm equipment and irrigation supplies, I have very close association with the farmers and ranchers in Baker Valley.

It is a pathetic situation to see the crops dry out and burn. The alfalfa producing a spotted, skimpy, one-third yield on the second cutting and no third cutting, due to the fact that our water goes floating down the river in May and the early part of June. There is no water in July, August, and September which are our best growing months. This is a yearly disaster which must be stopped to bolster our failing economy in Baker Valley.

Mr. ANDERSON, I sincerely urge you to help us gain authorization of Mason Dam project to help us remedy this deplorable situation.

Sincerely yours,

CHARLES H. BRITTON.

PIONEER FEDERAL SAVINGS AND
LOAN ASSOCIATION,
Baker, Oreg., April 5, 1961.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs, U. S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR ANDERSON: It is my understanding that the Mason Dam project on the Powder River in Baker County, Oreg., will come up very soon before your committee. I would like to urge you on behalf of our association and on behalf of the city of Baker and Baker County, to take affirmative

action on this measure, as we feel that it will be of great value to the economy of this area.

Yours very truly,

CARL DAVIS,
President.

JONES & SON,
Baker, Oreg., April 5, 1961.

HON. CLINTON P. ANDERSON,
Committee on Interior and Insular Affairs,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR: We wish to give our support to the proposed Mason Dam. We feel that it is needed now for our present acreage and to insure the future economy of our valley. The steady decrease in annual rainfall along with our ever-present need for more water makes this dam of vital concern to all Baker County folks. We give our wholehearted endorsement to this project.

Yours very truly,

HOWARD H. JONES.

BASCHE-SAGE HARDWARE CO.,
Baker, Oreg., April 5, 1961.

HON. CLINTON P. ANDERSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR ANDERSON: We understand that a hearing will be held concerning the building of the Mason Dam. We feel that this is a very worthy project which will certainly strengthen the economy of our community. Both in an economic way and through recreation areas it will obtain.

Other factors to consider would be flood control and storage of badly needed irrigation waters. The last few years show how badly we need an additional supply of water when we encounter an under average snow or rainfall.

We hope you will be able to help our community obtain this worthy project.

Very truly yours,

F. C. BASCHE.

Mrs. NEUBERGER subsequently said: Mr. President, the Powder River, on which the Mason Dam and Reservoir will be located meanders through saucer-shaped Baker Valley in one of the most scenic plateau areas of eastern Oregon. Timbered and rugged slopes form the south and west borders of the valley and sage-covered hills, the east and north boundaries. Construction of the irrigation facilities authorized by the legislation now before you will add to the economic stability of the Baker area without detracting from pastoral physical features.

Because of relatively high elevation, the Baker Valley farmers are faced with a shortened growing season. The average period between killing frosts is 137 days. Also, water shortages normally confront farmers for about half of the growing season. Water stored in Mason Dam Reservoir will provide supplemental irrigation water for approximately 13,990 acres now receiving a partial supply and would give a full supply to 4,010 acres not now irrigated. The project would also provide important flood control, fish and wildlife, and recreation benefits.

Principal project works would include Mason Dam, the Lilley pumping plant, and a relief pumping plant. Mason Dam is designed as a 185-foot-high, earth-and-rockfill structure, forming a 100,000 acre-foot reservoir on the Powder River

in Lower Sumpter Valley, about 18 miles upstream from Baker. Land now irrigated is generally flooded during the spring runoff to make maximum use of natural flows.

Storage in Mason Reservoir will permit more effective use of regulated flows for higher production of hay and other forage crops essential to this cattle-raising area. Thirty-eight thousand acre-feet of the space in Mason Reservoir will be used to store flood flows which periodically damage residential, commercial, and agricultural property in the Baker Valley.

Operation of the project also will preserve and enhance the fishery resources of Powder River by establishing lake fishing in the reservoir and by maintaining a live stream below the dam, through releases of water specifically for this purpose.

The reservoir area would be particularly attractive for recreation purposes, and provision is being made for facilities to accommodate visitors. Studies also are continuing on the possible acquisition of additional land around the reservoir, specifically for recreation, to implement the President's directive to realize maximum recreation benefits for future generations.

The benefit-cost ratio of this project is about 1.28 to 1. Officials of the State of Oregon have strongly endorsed authorization of the project and have recommended appropriation of funds for its construction at an early date. I urge favorable consideration of S. 308 as a means of furthering the progress of water resource development in our State.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. HUMPHREY. Madam President, I move to reconsider the vote by which the bill was passed.

Mr. MORSE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. HUMPHREY. Madam President, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

U.S. DISTRICT JUDGES

Mr. HUMPHREY. Madam President, I ask that the Senate proceed to the consideration of the first nomination on the calendar under U.S. district judges.

The PRESIDING OFFICER. The clerk will state the nomination.

The legislative clerk read the nomination of Irving Ben Cooper to be a U.S. district judge for the southern district of New York.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to this nomination?

The nomination was confirmed.

Mr. HUMPHREY. I move that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. HUMPHREY. I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

JURISDICTION OF U.S. DISTRICT COURTS

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its action on certain amendments of the Senate to House bill 1960, which was read as follows:

IN THE HOUSE OF REPRESENTATIVES, U.S.,
September 20, 1962.

Resolved, That the House concur in the amendment of the Senate numbered 1 to the bill (H.R. 1960) entitled "An Act to amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes", with the following amendment:

Strike out lines 3 through 5 on page 2 of the said House engrossed bill and insert in lieu thereof the following:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

Resolved, That the House concur in the amendment of the Senate numbered 2.

Mr. CARROLL. Madam President, H.R. 1960, which was passed in the Senate, with amendments, on September 6, 1962, has again been passed in the other body with an amendment to section 1361 of that bill. The bill as passed by the House retains the venue provision of the Senate version.

Following the passage in the Senate of H.R. 1960, the Department of Justice voiced some concern that the Senate language might result in the creation of a remedy different than we intended. Accordingly, I asked the Department of Justice to send me a letter, which I ask to have inserted in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., September 18, 1962.
Hon. JOHN A. CARROLL,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill H.R. 1960, "To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the U.S. district courts, and for other purposes," which passed the Senate amended September 6, 1962, and is awaiting action in the House.

The purpose of this bill, as indicated by the Senate report (S. Rept. No. 1992), is to make it possible to bring original actions in the nature of mandamus against Government officials and employees in all U.S. district courts. Such actions at present can be brought only in the U.S. District Court

for the District of Columbia. However, the Department believes that the language chosen to effect this purpose is susceptible to varying interpretations which might result in the creation of a remedy quite different from mandamus. Accordingly, to remove all doubt that the legislative intent of the bill is to do nothing more than extend to all U.S. district courts jurisdiction in mandamus actions against Federal officials and employees, the Department suggests that the language of proposed section 1361 be modified to read as follows: "The district courts shall have original jurisdiction [concurrent with that of the District Court for the District of Columbia] of any action in the nature of mandamus to compel an officer or employee of the United States, or of any agency thereof, to perform a duty owed to the plaintiff."

If the language suggested above is adopted, this Department, as well as the Department of the Treasury, will support the enactment of the bill.

Sincerely yours,
NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Mr. CARROLL. Madam President, after consultation with the Department and with the interested parties in the other body, it was agreed that the suggested language would accomplish the legislative purpose we were seeking. However, the suggested phrase in the Department of Justice language: "Concurrent with that of the District Court for the District of Columbia," was eliminated as unnecessary and cumbersome.

The only change in the bill as passed by the House then, would be to word proposed section 1361 to read as follows:

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States, or of any agency thereof, to perform a duty owed to the plaintiff.

As I have stated, I believe this language accomplishes the original legislative purpose of the bill and I urge that the Senate concur in the House amendment so that this important piece of legislation may become a part of title 28 of the United States Code.

Madam President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. CARROLL. Madam President, I move that the Senate reconsider the vote by which the motion was agreed to.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. HUMPHREY. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of certain measures on the calendar to which there is no objection.

The PRESIDING OFFICER. Without objection it is so ordered.

SALE OF CHESTNUT EXTRACT

The bill (H.R. 12416) to authorize the sale, without regard to the 6-month waiting period prescribed, of chestnut extract proposed to be disposed of pursuant to the Strategic and Critical Materials Stock Piling Act was considered.

H.R. 5144. An act to provide for the acquisition of and the payment for individual Indian and tribal lands of the Lower Brule Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir project on the Missouri River, and for the rehabilitation, social, and economic development of the members of the tribe, and for other purposes; and

H.R. 5165. An act to provide for the acquisition of and the payment for individual Indian and tribal lands of the Crow Creek Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir project on the Missouri River, and for the rehabilitation, social, and economic development of the members of the tribe, and for other purposes.

CORRECTION OF ROLL CALL

Mr. PERKINS. Mr. Speaker, in yesterday's RECORD, September 19, on roll-call No. 229, page 18838, I am recorded as being absent. I was present and answered to my name, and I ask unanimous consent that the permanent RECORD be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

TRADE EXPANSION ACT OF 1962

Mr. MILLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 11970) an act to promote the general welfare, foreign policy, and security of the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes, with Senate amendments thereto, and agree to the conference requested by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. MILLS, KING of California, BOGGS, KEOGH, MASON, BYRNES of Wisconsin, and BAKER.

CALL OF THE HOUSE

Mr. HALL. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. ALBERT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 234]

Bass, N.H.	Harsha	Powell
Blatnik	Hébert	Riley
Blitch	Hoffman, Mich.	Rivers, Alaska
Bromwell	Hull	Rogers, Colo.
Buckley	Kearns	Rousselot
Celler	Kowalski	St. Germain
Curtin	McDonough	Saund
Curtis, Mass.	McSweeney	Scranton
Davis,	McVey	Shipley
James C.	Magnuson	Sikes
Davis, Tenn.	Martin, Mass.	Smith, Calif.
Dawson	Morrow	Smith, Miss.
Diggs	Moeller	Spence
Dooley	Morris	Thompson, La.
Doyle	Morrison	Ullman
Edmondson	Moulder	Weis
Fino	Norrell	Whalley
Garland	O'Brien, Ill.	Wilson, Calif.
Gray	Pilcher	Zelenko

The SPEAKER. On this rollcall 374 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

INTRASTATE MOTOR CARRIERS IN INTERSTATE COMMERCE

Mr. HARRIS submitted the following conference report and statement on the bill (S. 320) to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State:

CONFERENCE REPORT (H. REPT. No. 2439)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 320) to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following: "That paragraph (1) of subsection (a) of section 206 of the Interstate Commerce Act is amended by striking out the last two sentences and by inserting in lieu thereof the following: 'Pending the determination of any such application the continuance of such operation shall be lawful.'

"Sec. 2. Subsection (a) of section 206 of the Interstate Commerce Act is amended by adding at the end thereof the following new paragraphs:

"(6) On and after the date of the enactment of this paragraph no certificate of public convenience and necessity under this part shall be required for operations in interstate or foreign commerce by a common carrier by motor vehicle operating solely within a single State and not controlled by, controlling, or under a common control with any carrier engaged in operations outside such State, if such carrier has obtained from the commission of such State authorized to issue such certificates, a certificate of public convenience and necessity authorizing motor vehicle common carrier operations in intrastate commerce and such certificate recites that it was issued after notice to interested persons through publication in the Federal Register of the filing of the application and of the desire of the applicant also to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority granted, that reasonable opportunity was afforded interested persons to be heard, that the State commission has duly considered the question of the proposed interstate and foreign operations and has found that public convenience and necessity require that the carrier authorized to engage in intrastate operations also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted. Such operations in interstate and foreign commerce shall, however, be subject to all other applicable requirements of this Act and the regulations prescribed hereunder. Such rights to engage in operations in interstate or foreign

commerce shall be evidenced by appropriate certificates of registration issued by the Commission which shall be valid only so long as the holder is a carrier engaged in operations solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of the intrastate certificate without the interstate or foreign rights shall terminate the right to engage in interstate or foreign commerce. The termination, restriction in scope, or suspension of the intrastate certificate shall on the 180th day thereafter terminate or similarly restrict the right to engage in interstate or foreign commerce unless the intrastate certificate shall have been renewed, reissued, or reinstated or the restrictions removed within said one hundred eighty-day period. Such rights shall be subject to suspension or termination by the Commission in accordance with the provisions of this Act governing the suspension and termination of certificates issued by the Commission. The Commission may impose reasonable requirements with respect to the filing with it of certified copies of such State certificates and other appropriate statements and data, and compliance with applicable requirements established by and under the authority of statutes applicable to interstate and foreign operations administered by the Commission, as conditions precedent to engaging in interstate and foreign operations under the authority of such State certificate. In accordance with such reasonable rules as may be prescribed by the Commission, any party in interest, who or which opposed in the State commission proceeding the authorization of operations in interstate or foreign commerce, may petition the Commission for reconsideration of the decision of the State commission authorizing operations in interstate or foreign commerce, and upon such reconsideration upon the record made before the State commission, the Commission may affirm, reverse, or modify the decision of the State commission, but only with respect to the authorization of operations in interstate and foreign commerce.

"(7) (A) In the case of any person who or which on the date of the enactment of this paragraph was in operation solely within a single State as a common carrier by motor vehicle in intrastate commerce (excluding persons controlled by, controlling, or under a common control with, a carrier engaged in operations outside such State), and who or which was also lawfully engaged in such operations in interstate or foreign commerce under the certificate exemption provisions of the second proviso of paragraph (1) of this subsection, as in effect immediately before the date of the enactment of this paragraph or who or which would have been so lawfully engaged in such operations but for the pendency of litigation to determine the validity of such person's intrastate operations to the extent such litigation is resolved in favor of such person, and has continued to so operate since that date (or if engaged in furnishing seasonal service only, was lawfully engaged in such operations in the year 1961 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person had no control, the Commission shall issue to such person a certificate of registration authorizing the continuance of such transportation in interstate and foreign commerce if application and proof of operations are submitted as provided in this subsection. Such

certificate of registration shall not exceed in scope the services authorized by the State certificate to be conducted in intrastate commerce, and shall be subject to the same terms, conditions, and limitations as are contained in or attached to the State certificate except to the extent that such terms, conditions, or limitations are inconsistent with the requirements established by or under this Act. If the effectiveness of the State certificate is limited to a specified period of time, the certificate of registration issued under this paragraph (7) shall be similarly limited. Operations in interstate and foreign commerce under such certificates of registration shall be subject to all other applicable requirements of this Act and the regulations prescribed hereunder. Certificates of registration shall be valid only so long as the holder is a carrier engaged in operation solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of the intrastate certificate without the interstate or foreign rights shall terminate the right to engage in interstate or foreign commerce. The termination, restriction in scope, or suspension of the intrastate certificate shall on the 180th day thereafter terminate or similarly restrict the right to engage in interstate or foreign commerce unless the intrastate certificate shall have been renewed, reissued, or reinstated or the restrictions removed within said one hundred and eighty-day period. Such certificates of registration shall be subject to suspension or termination by the Commission in accordance with the provisions of this Act governing the suspension and termination of certificates of public convenience and necessity issued by the Commission.

“(B) All rights to engage in operations in interstate and foreign commerce under the provisions of the second proviso of paragraph (1) of this subsection, as in effect immediately before the date of the enactment of this paragraph, shall cease and terminate, but any carrier lawfully engaged in interstate and foreign operations on the date of the enactment of this paragraph or any carrier who would have been so lawfully engaged in such operations but for the pendency of litigation to determine the validity of such person's intrastate operations to the extent such litigation is resolved in favor of such person, pursuant to such provisions, may continue such operations for 120 days after such date and, if appropriate application for a certificate of registration is filed within such period, such operations may be continued pending the determination of such application. The Commission shall prescribe the form of such application, the information and documents to be furnished, the manner of filing, and the persons to whom or the manner of giving notice to interested persons of such filings. Issues arising in the determination of such applications shall be determined in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings. A notice of intent to engage in interstate and foreign operations accompanied by certified copies of effective, lawfully issued or acquired State certificates filed with the Commission as evidence of authority to operate in interstate or foreign commerce under the provisions of the second proviso of paragraph (1) of this subsection, as in effect immediately before the date of the enactment of this

paragraph, shall be conclusive proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof.”

And the House agree to the same.

OREN HARRIS,
JOHN BELL WILLIAMS,
HARLEY O. STAGGERS,
SAMUEL N. FRIEDEL,
JOHN B. BENNETT,
WILLIAM L. SPRINGER,
HAROLD R. COLLIER,

Managers on the Part of the House.

GEORGE A. SMATHERS,
VANCE HARTKE,
GALE W. MCGEE,
THRUSTON B. MORTON,
JOHN MARSHALL BUTLER,

Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 320) to amend the provisions contained in part II of the Interstate Commerce Act concerning registration of State certificates whereby a common carrier by motor vehicle may engage in interstate and foreign commerce within a State, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Except for two changes, the bill as agreed to in conference is the same as the House amendment. The House amendment added new paragraphs (6) and (7) to subsection (a) of section 206 of the Interstate Commerce Act and repealed the second proviso to such subsection. These new paragraphs provide a procedure by which common carriers by motor vehicle which are certificated to engage in operations wholly within a State may be certificated for coextensive operations in interstate or foreign commerce. Paragraph (6) applies to motor carriers which after the date of enactment of this legislation will for the first time engage in such operations in interstate or foreign commerce. Paragraph (7) is a “grandfather provision” which applies to motor carriers which on the date of enactment of this legislation are engaged in operations in interstate or foreign commerce wholly within a State under the second proviso to section 206(a)(1) of the Interstate Commerce Act which this legislation repeals.

The changes from the House amendment made by the bill as agreed to in conference consist of deleting two amendments which were adopted on the House floor. These amendments were identical in text and were inserted in paragraphs (6) and (7). They read as follows: “If, however, during the six-month period of termination, restriction in scope or suspension of the State certificate the holder of the corresponding certificate of registration has continuously performed the interstate operations authorized thereunder such certificate of registration can only be suspended, revoked, or terminated by the Commission in accordance with the provisions of the Act governing such suspensions, revocations, or terminations of certificates issued by the Commission: *Provided, however, That under all other circumstances* * * *.”

These amendments which the Senate conferees refused to accept would have provided that, if the certificate holder carried on his interstate operations continuously during the 180-day period after his intrastate certificate was terminated, restricted in scope, or suspended, his certificate authorizing him to carry on such interstate operations could only be suspended, revoked, or terminated by the Interstate Commerce Commission after

formal proceedings as prescribed in the Interstate Commerce Act. The Interstate Commerce Commission was also strongly opposed to these amendments.

OREN HARRIS,
JOHN BELL WILLIAMS,
HARLEY O. STAGGERS,
SAMUEL N. FRIEDEL,
JOHN B. BENNETT,
WILLIAM L. SPRINGER,
HAROLD R. COLLIER,

Managers on the Part of the House.

CORRECTION OF ROLL CALL

Mr. MILLER of New York. Mr. Speaker, on roll call No. 229, a quorum call, I am recorded as absent. I was present and answered to my name.

I ask unanimous consent that the permanent Record and Journal be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

TO AMEND CHAPTER 85 OF TITLE 28 OF THE UNITED STATES CODE

Mr. FORRESTER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 1960, with Senate amendments thereto and consider the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 5, strike out “his duty.” and insert “a duty owed to the plaintiff or to make a decision in any matter involving the exercise of discretion.”

Page 2, strike out lines 12 to 18, inclusive, and insert:

“(e) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.”

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

Mr. POFF. Mr. Speaker, reserving the right to object, inasmuch as there is departmental approval of the measure and inasmuch as there is complete support for the measure on this side of the aisle, I shall not object. However, I take this time to ask the chairman of the subcommittee, the gentleman from Georgia [Mr. FORRESTER], to make a brief explanation of the Senate amendments.

Mr. FORRESTER. Mr. Speaker, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Georgia.

Mr. FORRESTER. Mr. Speaker, the Senate has proposed three changes in the bill as it passed the House.

First, in respect to section 1 of the bill which deals with an action to compel an officer to perform his duty, the Senate amended the House bill to spell

out in greater detail the nature of the jurisdiction conferred. The Senate amendment makes it clear that the duty must be one owed to the plaintiff. It also specifies that where the duty involves the exercise of discretion, the court may compel the officer to exercise his discretion but, as the Senate report makes clear, the court may not direct or influence the substance of such a decision.

The second change proposed by the Senate is in respect to section 2 of the bill, the venue part. The House bill provided that an action within this section may be brought in any judicial district where a plaintiff in the action resides, or in which the cause of action arose, or in which any property involved in the action is situated. The Senate amendments both clarify and limit these provisions.

The Senate version limits the House bill where real property is involved in the action. In those cases the Senate would not provide for venue where the plaintiff resides.

The Senate amendments clarify in that they specifically provide for venue where a defendant in the action resides. As pointed out in the House report on this bill, it was contemplated that the provisions of the proposed section 1391 (e) would be supplementary rather than exclusive. Section 1391(b) now provides for venue in the judicial district where all the defendants reside.

The Senate amendment resolves any ambiguity which could arise in the relationship between section 1391(b) and the proposed section 1391(e) by making it clear that an action within section 1391(e) may be brought wherever a defendant in the action resides.

Finally, the Senate specifically provided that the venue provision should apply only to the extent that venue is not otherwise provided by law. The Senate report gives some examples of such proceedings. Included in those examples are proceedings brought with respect to Federal taxes and proceedings under section 5 of the act of September 26, 1961, relating to immigration. It is my understanding that as a result of section 8(a) of the Tennessee Valley Authority Act, actions against the TVA would be another example.

The Committee on the Judiciary believes that the Senate amendments contribute a great deal toward achieving clarity in this legislation. However, the committee is concerned with the wording of section 1 of the bill. The Department of Justice has informed the committee that it fears that this language may produce broad and unintended results. These, the Department states, may best be avoided by making specific reference in the statute to the mandamus concept. The Department has, therefore, proposed that section 1361 should read as follows:

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

The committee agrees that by specifically making relevant a body of known

principles, greater certainty can be achieved. Accordingly, the committee accepts and endorses the amendment proposed by the Department of Justice.

The committee has been assured that with this amendment, the bill will receive the endorsement and support of both the Department of Justice and the Treasury Department.

We have also been assured that the amendment is acceptable to proponents of this legislation in the Senate.

Mr. POFF. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Georgia? -

There was no objection.

Mr. FORRESTER. Mr. Speaker, I offer a motion.

The SPEAKER. The Clerk will read the motion.

The Clerk read as follows:

Mr. FORRESTER moves to concur in Senate amendment No. 1 with the following amendment: Strike out lines 3 through 5 on page 2 of the House engrossed copy and insert in lieu thereof the following: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The SPEAKER. The question is on the motion offered by the gentleman from Georgia.

The motion was agreed to.

A motion to reconsider was laid on the table.

Mr. FORRESTER. Mr. Speaker, I offer a motion.

The SPEAKER. The Clerk will report the motion of the gentleman from Georgia.

The Clerk read as follows:

Mr. FORRESTER moves to concur in Senate amendment No. 2.

The SPEAKER. The question is on the motion of the gentleman from Georgia.

The motion was agreed to.

A motion to reconsider was laid on the table.

CORRECTION ON ROLL CALLS

Mr. ASHBROOK. Mr. Speaker, on yesterday, on rollcall No. 232, I am recorded as not voting. I was present and noted "nay." I ask unanimous consent that the permanent Record and Journal be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. CRAMER. Mr. Speaker, on rollcall No. 233 I am recorded as not voting. I did in fact vote "nay." I ask unanimous consent that the permanent Record and Journal be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

FOOD AND AGRICULTURE ACT OF 1962

Mr. COOLEY. Mr. Speaker, I call up the conference report on the bill (H.R.

12391) to improve and protect farm income, to reduce costs of farm programs to the Federal Government, to reduce the Federal Government's excessive stocks of agricultural commodities, to maintain reasonable and stable prices of agricultural commodities and products to consumers, to provide adequate supplies of agricultural commodities for domestic and foreign needs, to conserve natural resources, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 17, 1962.)

The SPEAKER. The Chair recognizes the gentleman from North Carolina [Mr. COOLEY].

Mr. HOEVEN. Mr. Speaker, will the gentleman yield?

Mr. COOLEY. I yield to the gentleman from Iowa.

Mr. HOEVEN. Will the gentleman yield the minority time on this conference report? I suggest he yield the minority 30 minutes.

Mr. COOLEY. I have such demand for time it would not be proper for me to comply with the gentleman's request, but I will yield the gentleman 20 minutes.

Mr. HOEVEN. Will it be understood, then, that the 20 minutes will be yielded to the gentleman from Iowa, and that he in turn may yield to Members on this side during the time limitation without losing the floor?

Mr. COOLEY. That is perfectly agreeable to me.

Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, we are here now about to make a very important decision. I still maintain that the problems of agriculture are paramount to just about all of our other problems. If agriculture is impoverished the Nation and the national economy are in danger.

Our farm program for many years operated very successfully and very well. But in recent years we have sustained gigantic losses and accumulated gigantic surpluses. Unless action is taken, we revert to the program of 1958, under which we sustained these losses and accumulated these surpluses.

I want to congratulate and commend the members of our Committee on Agriculture on the splendid manner in which they have discharged the duties assigned to them. We started to work on farm legislation back in January. Here it is now well into the middle of September. We have been up the hill and down again. Finally a bill passed this House. We went to conference. Of course we knew we would have to make concessions and compose differences, and that we did, but we made, I think, a minimum of concessions and we forced the other body likewise to make substantial concessions.

We have a bill here now that I believe is perhaps better than the House bill and better than the Senate bill. It is a com-

mination of the two. I shall discuss later in these remarks the details of the conference report. Every provision in our bill was handled by a subcommittee and the chairmen of the subcommittees will explain these separate provisions. The grain section was handled by the gentleman from Texas [Mr. POAGE], the wheat section by the gentleman from Kansas [Mr. BREEDING], and all the other provisions were handled by subcommittees. We reached an agreement.

Mr. HALLECK. Mr. Speaker, will the gentleman yield?

Mr. COOLEY. I yield to the gentleman from Indiana.

Mr. HALLECK. What subcommittee handled the compensatory payments? That was in neither the House or Senate bill, but it shows up in the conference report.

Mr. COOLEY. The gentleman says it was in neither bill?

Mr. HALLECK. That is right.

Mr. COOLEY. Certainly we had payments in the House bill.

Mr. HALLECK. This kind of payment?

Mr. COOLEY. Well, we had payments for compliance with acreage reductions. This is payment in kind. You can call it compensatory payments if you want to. You can call it compliance payments. It is the same thing that has been used for the last 2 years.

Mr. HALLECK. My information is that this sort of proposition was never discussed in the committee. As a matter of fact, it is a complete departure from anything that we have ever had in farm legislation here except in the form of proposals from a previous administration that wanted this kind of a plan. It is a payment directly out of the Federal Treasury on a bushel basis to the farmer.

Mr. COOLEY. It is taken out of the warehouses—out of surplus stocks held by the Government—for payment in kind to farmers who comply with the program to divert land from the production of further surpluses. I think we would do well to use the surplus commodity rather than to use the cash. I cannot think of a better use for these surpluses than to prevent future surpluses. Much of our consideration has been with the problem of moving our surpluses in a manner to get the greatest return to the Treasury. This is why, for example, we have given the Secretary of Agriculture authority to use the private trade in making surplus sales for long-term dollar credit. And in this connection, Mr. Speaker, I want to say that the intent of Congress in passing the private trade amendment to sections 401 and 402 of title IV of Public Law 480 is for the purpose of conveying to the Secretary of Agriculture full authority to enter into private trade agreements as an additional sales means for moving agricultural commodities in order to regain, retain, develop and expand dollar markets for such commodities. It is not intended that this authority should be administered as a foreign lending or assistance program. Therefore, this program should not be encumbered or delayed by being subjected to interagency and inter-governmental clearances, con-

sultation and other procedures which usually apply in the case of such foreign lending and assistance programs. For example, consultation with other supplying countries would not only be inappropriate but could defeat the entire purpose of these amendments. These amendments do not change the disposal priorities for surpluses which were set out in the Conference report on the Agricultural Act of 1961: 1. Sales for cash dollars. 2. Sales for short-term dollar credit. 3. Barter for strategic and other materials. 4. Sales on long-term dollar credit under title IV. 5. Sales for foreign currency. 6. Donations.

Mr. POAGE. Mr. Speaker, will the gentleman yield?

Mr. COOLEY. I yield.

Mr. POAGE. This plan was proposed to the committee by a member of the minority party, a member of our committee, and was considered by our committee.

Mr. COOLEY. Certainly we would not have inserted a provision dealing with payments if payments were not provided in either the Senate bill or the House bill.

Mr. Speaker, let us examine the bill first in relation to our objectives.

The No. 1 objective is to continue the upward movement of farm income. This is essential if we are to keep our Nation's economy moving, expanding, fulfilling our capabilities for strength and prosperity. Prior to 1961, declining farm income was a dangerous weakness in the American economy. This 87th Congress can take great pride that its first major legislation—the emergency feed grain action in 1961—increased farm income last year by more than a billion dollars, a jump of nearly 10 percent. And so far in 1962, the new level is being maintained and, we hope, bettered.

The second objective is to continue to reduce surpluses and the taxpayers' burdens in financing those surpluses. Under the previous legislation and previous administration of that legislation, surplus was piled upon surplus. Year after year, the burdens grew heavier. Our emergency legislation was designed to stem this avalanche of surpluses. It did far better than that. On July 1 this year, total stocks of feed grains and wheat in the United States were 532 million bushels less than on July 1, 1961, and Government carrying charges on the publicly owned grains are down approximately \$213 million a year.

For the first time since 1952, production of feed grains in 1961 was reduced below the level of consumption. Carry-over into the 1962-63 marketing year is down about 14 percent from a year earlier. The 1961 program alone will save taxpayers around \$600 million.

The results being achieved in the 1962 feed grain program are of comparable importance.

In the 1962 wheat program, production of winter wheat has been cut by nearly one-fourth.

These are solid achievements. We dare not return to costly, ineffective legislation previously in effect. But that is what we will do if we do not enact new

legislation. The third objective I mentioned earlier is that of bringing about land use adjustments in line with the needs of the people.

Only two-thirds of the Nation's cropland is being used to produce the great abundance we now enjoy.

At least 38 million acres will come into production within a very short time unless we take action. Conservation reserve contracts will run out; the feed grain and wheat programs are temporary. Our failure to act would throw millions of acres of land into the production of commodities which not only are not needed but would be a burden upon the people. Yet there are good uses for land not needed in crop and livestock production—uses that will meet real needs of the people and at the same time help to rejuvenate the rural economy.

We have great opportunities to develop and safeguard the water resources of our Nation—water resources that are becoming scarce. We have the opportunity to clean up our streams, to prevent floods, to assure the Nation of timber supplies in the future, and to open up God's great outdoors to more members of our expanding national family of citizens.

Mr. Speaker, while others will discuss the provisions of the conference report in more detail, I shall read into the Record at this point a summary of the major parts of H.R. 12391, the Food and Agriculture Act of 1962.

TITLE I—LAND USE ADJUSTMENT

Section 101:

This section amends the Soil Conservation and Domestic Allotment Act to provide for continued Federal administration of the agricultural conservation program and provides authority for the Secretary of Agriculture to carry out long-range conservation plans with individual farmers and ranchers in all agricultural areas through agreements for periods not to exceed 10 years to provide for changes in cropping systems and land use, and for development of soil, water, forest, wildlife and recreation resources by means of cost sharing and other assistance.

Agreements may not be entered into covering land with respect to which the ownership has changed in the 2-year period preceding the first year of the contract period except with successors by inheritance or purchasers during the contract period. Agreements for the establishment of tree cover may not provide for annual payments with respect to such land for a period in excess of 5 years.

The Secretary cannot enter into agreements providing for assistance in amounts in excess of \$10 million for any calendar year, except that for calendar year 1963 he may provide assistance with respect to lands previously covered by conservation reserve contracts in an amount not exceeding an additional \$15 million.

Section 102:

The amendments to title III of the Bankhead-Jones Farm Tenant Act include changes in section 31 to provide for the protection of fish and wildlife, but prohibits the building of industrial



Public Law 87-748
87th Congress, H. R. 1960
October 5, 1962

An Act

76 STAT. 744.

To amend chapter 85 of title 28 of the United States Code relating to the jurisdiction of the United States district courts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 85 of title 28 of the United States Code is amended—

(a) By adding at the end thereof the following new section:

“§ 1361. Action to compel an officer of the United States to perform his duty

“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

(b) By adding at the end of the table of sections for chapter 85 of title 28 of the United States Code the following:

“1361. Action to compel an officer of the United States to perform his duty.”

SEC. 2. Section 1391 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

“(e) A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action.

“The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.”

Approved October 5, 1962.

Courts.
Actions against
Government of-
ficials.
28 USC 1331-
1360.

